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RECORD, CASE No. 13,620.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~406~~. 78

KNOX COUNTY, IN THE STATE OF MISSOURI, PLAINTIFF IN ERROR,

vs.

THE NINTH NATIONAL BANK OF THE CITY OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED AUGUST 29, 1889.

RECORD, CASE No. 13,620.

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TERM No., 406.

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THE NINTH NATIONAL BANK OF THE CITY OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from eastern division	1	1
Order filing petition	2	1
Order filing answer	2	1
Order to transfer to northern division	3	2
Motion to transfer	3	2
Clerk's certificate	4	2
Original petition	5	3
Summons	11	6
Marshal's return	12	6
Answer	12	7
Order filing amended and supplemental petition	14	8
Amended and supplemental petition	14	8
Order filing answer to amended petition	26	15
Answer to amended petition	26	15
Order beginning trial	30	17
Withdrawal of bonds and coupons	31	18
Order concluding trial, &c.	32	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 29, 1892.

	Original.	Print.
Verdict	33	19
Judgment	34	19
Order filing motion for new trial and for continuance	35	20
Motion for new trial	35	20
Order filing motion in arrest of judgment and for continuance	37	21
Motion in arrest of judgment	37	21
Order filing bonds and coupons	38	22
Order overruling motion for new trial	39	22
Order overruling motion in arrest of judgment	39	23
Order granting time to file bill of exceptions	40	23
Order granting leave to file bill of exceptions at next term	40	23
Order filing bill of exceptions	41	24
Bill of exceptions	42	24
Evidence for plaintiff	42	24
Copy of bond	42	25
Sections 1, 7, and 13 of act to incorporate Missouri and Mississippi Railroad Company	43	25
Order of county court of Knox county, February 6, 1867	45	26
Order of county court of Knox county, February 8, 1867	46	27
Order of county court of Knox county, March 6, 1867	47	27
Entry from records of county court, March 18, 1867	49	28
Order of county court of Knox county, March 13, 1867	50	29
Order of county court of Knox county levying taxes	51	29
Testimony of Wm. F. Plumer	52	30
Abner L. Gilstrap	86	50
Griffin Frost	88	51
Exhibit A—Statement of the debt and finances of Knox county	88	52
Order of court allowing Frost's account	96	56
Statement (not set out)	98	57
Bond register	101	59
Sections 17 and 18 of the General Statutes of Missouri, 1866	107	62
Agreement as to laws, &c.	109	63
Evidence for defendant	109	63
Testimony of Sylvester Schultz	111	64
Abner L. Gilstrap	175	104
Philip B. Linville	183	109
Jacob Pugh	186	111
Frank M. Miller	190	113
Defendant's requests	191	114
Charge to the jury	195	116
Objections to charge	202	119
Verdict	208	123
Motion for new trial	210	124
Motion in arrest of judgment	211	124
Judge's certificate	213	125
Order granting writ of error, &c.	214	126
Bond	214	126
Clerk's certificate	217	127
Writ of error	218	128
Return to writ	219	129
Citation and proof of service of same	220	129

1 UNITED STATES OF AMERICA,
Northern Division of the Eastern Judicial District of Missouri, } ss:

In the Circuit Court of the United States in and for the Northern Division of said Judicial District.

Be it remembered that on the 5th day of November, A. D. 1887, in vacation, before the November term, 1887, of said court, the following appears of record, to wit:

Filing of Transcript of Transfer.

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 12.

And now, at this day, is received from the clerk of the United States circuit court in and for the eastern judicial district of Missouri the following papers in the above-entitled cause, which are duly filed, to wit: "Certified copy of record and proceedings" in said court, "original petition," "original summons," and "original answer."

Which said "certified copy of the record and proceedings" is in words and figures as follows, to wit:

2 *Transcript.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the fourteenth day of June, A. D. 1884, the following, among other, proceedings were had in the circuit court of the United States for the eastern district of Missouri, and appear of record in said court, to wit:

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 2364.

Now comes plaintiff, by Henderson and Lewis, its attorneys, and files petition herein.

And afterwards, to wit, on the sixteenth day of September, A. D. 1884, the following further proceedings were had and appear of record in said cause, to wit:

NINTH NATIONAL BANK OF NEW YORK
vs.
KNOX COUNTY. } 2364.

Now comes defendant and files answer.

And afterwards, to wit, on the nineteenth day of September, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

3 NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 2364.

On motion of defendant, this day filed, it is ordered that this cause be and the same is transferred to the northern division of the eastern judicial district of Missouri.

Said motion to transfer is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, September Term, 1887.

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant. } No. 2364.

The defendant states that the above-entitled cause was commenced in the eastern district of Missouri on the 14th day of June, 1884, by the plaintiff against it, and a summons was sued out 18th day of June, 1884, returnable to the September term, 1884, of said court; that since the commencement of said suit said district has been divided into two divisions, called respectively the northern and eastern divisions of the eastern judicial district of Missouri; that the defendant is a municipal corporation, created and organized under and pursuant to the statutes of the State of Missouri, and is composed of citizens of said State, and they compose the
4 county of Knox, in the northern division of said eastern judicial district; that said suit is pending, undetermined, in the eastern division of said eastern judicial district, and the defendant desires to have the same transferred to said northern division of said eastern judicial district, to be disposed of therein according to law. Defendant therefore prays the court to make an order transferring this cause from said eastern division of said eastern judicial district to said northern division of said eastern judicial district, according to the statute in such case made and provided.

JAMES CARR,
Attorney for Defendant.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Mis-

souri, do hereby certify the writing hereto attached to be a true copy of record and proceedings in case No. 2364, of Ninth National Bank of New York, plaintiff, against Knox County, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the [L. S.] eastern division of said district, this eighteenth day of October, in the year of our Lord eighteen hundred and eighty-seven.

A. P. SELBY,
Clerk of said Court.

5 Endorsed: No. 12. United States circuit court, eastern division of the eastern judicial district of Missouri. Ninth National Bank of New York against Knox County. Duly certified copy of record and proceedings in the above-entitled cause. Filed Nov. 5, 1887. Geo. C. Moore, clerk.

And the said original petition is in words and figures as follows, to wit:

Petition.

In the Circuit Court of the United States for the Eastern District of Missouri, Term A. D. 1884.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
v.
KNOX COUNTY, in the State of Missouri, Defendant.

The plaintiff respectfully represents to the court that it is a banking company, duly incorporated as such under the laws of the United States and under the laws of the State of New York, composed of stockholders resident in the State of New York and citizens thereof, and said bank is located in the State of New York, and does business therein, and is a citizen of said State of New York; and that the defendant is a municipal corporation, composed of citizens of the State of Missouri, the same being a county in said State, and a citizen thereof; and plaintiff further says that the defendant,
6 on the first day of February, 1868, by its certain writing obligatory called and known as Knox county bond No. 130, signed by Wm. F. Plumer, the presiding justice of the county court of said Knox county, and by James C. Agnew, the clerk of the county court of said county, and sealed with the seal of the county court of said county, which said bond is dated on the first day of February, 1868, acknowledged itself indebted and firmly bound to the Missouri and Mississippi Railroad Company or bearer in the sum of five hundred dollars, which sum the said defendant, by said writing obligatory, on the day and year aforesaid, promised by said bond to pay to said railroad company or bearer, at the National Bank of Commerce, in the city and State of New York, on the first day of February, 1878, together with interest thereon from the date thereof,

at the rate of seven per cent. per annum, which interest was and is to be annually paid on the presentation and delivery of the coupons for interest thereto attached at the said National Bank of Commerce, in the city and State of New York.

Plaintiff avers that said bond was issued and delivered by said Knox county to the said Missouri and Mississippi Railroad Company in payment of its subscription, previously made, to the capital stock of the said Missouri and Mississippi Railroad Company, which said company was duly incorporated by a special act of the General Assembly of the State of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company, approved February 20th, 1865," and the same was issued under and pursuant to said said act and an order of the county court of said Knox county and in compliance with a vote of the people of said county.

7 Plaintiff further avers that, in full consideration of said bond and other bonds of like tenor and effect and issued at the same time, defendant accepted and received from said company a certificate of stock thereon for the amount of its said subscription, to pay which said bond was so issued, and has at all times since held said certificate and voted thereon at the meetings and elections of stockholders thereof; and defendant in each year and from year to year since the date of said bond has caused the necessary taxes to be collected in said county to pay the coupons on said bond and on all other bonds of the same issue; and plaintiff states that he is the holder and bearer of said bond for value and now brings the same here into court and prays judgment for the amount thereof, together with interest at seven per cent. per annum, and damages thereon; and, second, plaintiff avers that at the time of issuing and negotiating said bond hereinbefore described the defendant county issued, negotiated, and delivered to said railway company certain of the bonds and numbered as follows, to wit: Nos. 131, 132, 134, 139, 140, 141, and 142, each bond being for five hundred dollars, dated on same day as bond No. 130, hereinbefore described, payable at the same time and place as said bond and containing the same recitals and issued and delivered for the same consideration and for the same purpose as said bond No. 130.

And said last-named bonds are in all respects alike and similar to said bond No. 130, except the serial number by which they are distinguished; they contain the same recitals as contained in No. 130; and said bonds were issued and negotiated in like man-

8 ner for stock subscribed by said county to said railway company, for which said county received certificates of stock in same manner in said company and yet holds and retains the same. Plaintiff states that it is the holder and bearer of said bonds for value and now brings the same here into court and prays judgment thereof, together with interest, and damages thereon, and also for its costs of suit.

And, third, *and* plaintiff avers further that at the time of issuing and negotiating said bonds hereinbefore described the defendant county issued, negotiated, and delivered to said railway company certain other bonds and numbered as follows, to wit: Nos. 1, 22, 23,

24, 21, and 28, each bond being for five hundred dollars, dated on the first day of October, 1867, payable ten years after the date thereof, at the Bank of Commerce, in the city and State of New York.

And said last-named bonds are in all respects alike and similar to said bond No. 130, set forth in the first count of this petition, excepting the numbers and the date thereof; they contain the same recitals as contained in No. 130; and said bonds were issued and negotiated in like manner for stock subscribed by said county to said railway company, for which said county received certificates of stock in same manner in said company and yet holds and retains the same.

Plaintiff states that it is the holder and bearer of said bonds for value and brings the same here into court and prays judgment for the amount thereof, together with interest at seven per. cent per annum, and damages thereon, and also for its costs of suit.

9 And, fourth, plaintiff says that it is the owner and holder for value of all the coupons hereinafter named, detached from the six bonds last hereinbefore described, which coupons, on the respective dates of their maturity, *are* hereinafter stated, he caused to be presented for payment at the office of the Bank of Commerce, in the city and State aforesaid, and payment thereof was demanded and refused; by each of *of* which said coupons the said county promised and agreed to pay to the bearer, at said office of the Bank of Commerce, the sum of thirty-five dollars, one of said coupons being ditached from each of the bonds hereinafter named, and payable at the dates named, to wit:

Fifth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six coupons, due and payable on the first day of October, 1873, one coupon being detached from each of the following-named bonds, to wit: Nos. 1, 22, 23, 24, 21, and 38.

Sixth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six coupons due and payable on the first day of October, 1874, one coupon being detached from each of the bonds herein last named.

Seventh. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six coupons, due and payable on the first day of October, 1875, one coupon being detached from each of the bonds herein last named.

Eighth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six coupons, due and payable on the first day of October, 1876, one coupon being detached from each of the bonds herein last named.

10 Ninth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six coupons, due and payable on the first day of October, 1877, one coupon being detached from the bonds herein last named; and plaintiff now comes and says that it is the owner and holder of each and all of said coupons, to wit, thirty coupons in number, each being payable at the date specified above and each promising to pay *to pay* to bearer thirty-five dollars as aforesaid, which coupons he caused to

be presented for payment at maturity, according to their terms, as herein set forth, at the office of the Bank of Commerce, in the city and State of New York aforesaid, and payment in each and every case was refused. Wherefore defendant is indebted to plaintiff in the sum of ten hundred and fifty — ($1,050), and therefore it now comes into court and prays judgment thereon, with interest, damages, and costs of suit. He says that by and *and* under the laws of the State he is entitled to have and recover of defendant interest on the amount of said coupons from their maturity, respectively, up to the date of judgment and payment, at the rate of seven per cent. per annum, for which plaintiff prays judgment.

J. B. HENDERSON,
J. M. LEWIS,
Attorneys for Plaintiff.

Endorsed: No. 12. Ninth National Bank, plaintiff, *v.* Knox County, defendant. Petition. Filed June 14th, 1884. A. P. Selby, clerk. Filed Nov. 5, 1887. Geo. C. Moore, clerk.

11 Which said "original summons" is in words and figures as follows, to wit:

Summons.

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

The President of the United States to the marshall of the United States in and and for said district, Greeting:

You are hereby commanded to summon Knox County, in the State of Missouri, and a municipal corporation and citizen of the State of Missouri, that it be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of September next, then and there to answer the complaint of Ninth National Bank of the City of New York, a corporation, citizen of the State of New York, as set forth in the petition filed in said court on the 14th day of June, A. D. eighteen hundred and eighty-four.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 18th day of June, A. D. eighteen hundred and eighty-four.

Issued at office, in the city of St. Louis, under the seal of
[L. S.] said circuit court, the day and year last aforesaid.

A. P. SELBY, *Clerk.*

12 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

I hereby certify that I have served the within writ by delivering

a copy thereof, with a copy of the petition thereto attached, to Samuel Ennis, the clerk of the county court of Knox county, on the 28th day of June, A. D. 1884, at Edina, the county-seat of Knox county, in the above district.

FELIX COSTE,
United States Marshall, Eastern District of Missouri,
By O. K. WHEELER, *Deputy.*

Marshall's fees:

1 service, at 2.00	2 00
Mileage, 176 miles, at 6 cts.	10 56
Total	12 56

Endorsed: No. 12. United States circuit court, eastern district of Missouri. Ninth National Bank *vs.* Knox County. Summons. Issued 18th day of June, 1884; ret'ble 15th day of September, A. D. 1884. Returned into court and filed 30th day of June, A. D. 1884. A. P. Selby, clerk. Filed Nov. 5, 1887. Geo. C. Moore, clerk.

And the said "original answer" is in words and figures as follows, to wit:

Answer.

In the Circuit Court of the United States for the Eastern District of Missouri, September Term, 1884.

13 NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant. } No. 2364.

Defendant, for answer to plaintiff's petition filed in the above-entitled cause, denies that the bond described in the first count in said petition, to wit, bond No. 130, was issued to the Missouri and Mississippi Railroad Company by an order of the county court of Knox county, in compliance with a vote of the people of said county. Defendant also denies that the bonds described in each of the other counts in said petition or any of them were issued under or pursuant to an order of Knox county court or in compliance with a vote of the people of said county. Defendant denies that there ever was any vote of the people of said county authorizing the county court of Knox county to issue the bonds described in said petition or any of them on behalf of Knox county to the Missouri and Mississippi Railway Company.

Defendant asks that the bonds and coupons sued on may be filed in said cause, as required by the statute in such cases, and also that said bonds and coupons may be identified.

JAMES CARR AND
GEORGE D. REYNOLDS,
Attorneys for Def't.

Endorsed: No. 12. Ninth National Bank of New York *vs.* Knox County. Answer. Filed Sept. 16, 1884. A. P. Selby, cl'k. James Carr & Geo. D. Reynolds, att'ys for def't. Filed Nov. 5, 1887. Geo. C. Moore, clerk.

14 Afterwards, in vacation of the November term, A. D. 1887, on the 28th day of December, 1887, the following appears of record:

NINTH NATIONAL BANK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 12.

At this day comes the plaintiff, by its attorney, and files amended and supplementary petition herein.

Which said amended and supplementary petition is in words and figures as follows:

Filing of Amended & Supplementary Petition.

In the Circuit Court of the United States in and for the Northern Division of the Eastern District of Missouri.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri.

Sup. & am'd petition.

The plaintiff now comes and files by leave of court and by consent of defendant his amendatory and supplemental petition, in which it respectfully represents to the court that it is a banking company, duly incorporated as such under the laws of the United States and under the laws of the State of New York, composed of stockholders resident *of* the State of New York and citizens thereof, and said bank is located in the State of New York and does business therein and is a citizen of said State of New York, and that the defendant is a mun-cipal corporation, composed of citizens of the State of Missouri, the same being a county in said State and a citizen thereof.

15 An- plaintiff further says that the defendant, on the first day of February, 1868, by its certain writing obligatory, called and known as Knox county bond No. 130, signed by Wm. F. Plumer, then presiding justice of the county court of said Knox county, and by James C. Agnew, then clerk of the county court of said county, which said bond is dated on the first day of February, 1868, and under the seal of said court, acknowledged itself indebted and firmly bound to the Missouri and Mississippi Railroad Company or bearer in the sum of five hundred dollars, which sum the said defendant, by said writing obligatory, on the day and year aforesaid, promised by said bond to pay to said railroad company or bearer, at the National Bank of Commerce, in the city and State of

New York, on the first day of February, 1878, together with interest thereon from the date thereof at the rate of seven per cent. per annum, which interest was and is to be annually paid on presentation and delivery of the coupons for interest thereto attached at the said National Bank of Commerce, in the city and State of New York.

Plaintiff avers that said bond was issued and delivered by said Knox county to the said Missouri and Mississippi Railroad Company in payment of its subscription, previously made, to the capital stock of the said Missouri and Mississippi Railroad Company, which said company was duly incorporated by a special act of the General Assembly of the State of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company, approved February 20th, 1865," and the same was issued under and pursuant to said act and an order of the county court of said Knox county and in compliance with a vote of the people of said county.

Plaintiff further avers that, in full consideration of said bond and other bonds of like tenor and effect and issued at the same
16 time, the defendant accepted and received from said company a certificate of stock thereon for the amount of the said subscription, to pay which said bond was so issued, and has at all times held such certificate and voted thereon at the meetings and elections of stockholders thereof; and defendant, in each year and from year to year since the date of said bond, has caused the necessary taxes to be collected in said county to pay the coupons on said bond and all other bonds of the same issue.

And plaintiff states that he is a holder and bearer of said bonds for value and now brings the same here into court and prays judgment for the amount thereof, together with interest at seven per cent. per annum, and damages thereon.

2nd. And, second, plaintiff avers that at the time of issuing and negotiating said bond hereinbefore described the defendant county issued, negotiated, and delivered to said railway company certain other bonds, and numbered as follows, to wit, Nos. 131, 132, 134, 139, 140, 141, and 142, each bond being for five hundred dollars, dated on the same day as bond No. 130, hereinbefore described, payable at the same time and place as said bond and containing the same recitals and issued and delivered for same consideration and for the same purposes as said bond No. 130.

And said last-named bonds are in all respects alike and similar to said bond No. 130, except the serial number by which they are distinguished; they contain the same recitals as contained in No. 130; and said bonds were issued under and by the same authority and negotiated in like manner and for stock subscribed by said county to said railway company, for which said county received certificates of stock in the same manner in said company and yet holds and retains the same.

17 Plaintiff states that it is the holder and bearer of said bonds for value and now brings the same here into court and prays judgment for the amount thereof, together with interest and damages thereon, and also for its costs of suit; and, third, *and*

plaintiff avers further that previous to the time of issuing and negotiating the before-mentioned bonds and as hereinbefore described, to wit, on October the first, 1867, the defendant county issued, negotiated, and delivered to said railway company certain other bonds, numbered as follows, to wit, Nos. 1, 22, 23, 24, 21, and 38, each bond being for five hundred dollars and dated on the first day of October, 1867, payable ten years after the date thereof, at the Bank of Commerce, in the city and State of New York.

And said last-named bonds are in all respects alike and similar to said bond No. 130, set forth in the first count of the petition, excepting the numbers and the date thereof; they contain the same recitals as contained in No. 130; and said bonds were issued under and by the same authority and negotiated in like manner for stock subscribed by said county to said railway company, for which said county received certificates of stock in the same manner in said company and yet holds and retains the same.

Plaintiff states that it is the holder and bearer of said bonds for value and demanded payment thereof and of all bonds hereinbefore described, when due, at the said bank and payment was refused, and now brings the same here into court and prays judgment for the amount thereof, together with interest at seven per cent. per annum, and damages thereon, and also for its costs of suit.

And, fourth, plaintiff says that it is the owner and holder for value of all the thirty coupons hereinafter named and de-
18 tached from the six bonds last hereinbefore described, which coupons, on the respective dates of their maturity, as hereinafter stated, he caused to be presented for payment at the office of the said Bank of Commerce, in the city and State aforesaid, and payment thereof was demanded and refused; by each of which said coupons the said county promised and agreed to pay to the bearer, at said office of the Bank of Commerce, the sum of thirty-five dollars, one of said coupons being detached from each of the bonds hereinafter named, and payable at the dates named, to wit:

Fifth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six of said coupons, due and payable on the first day of October, 1873, one coupon being detached from each of the bonds herein last named, to wit, bonds numbered 1, 22, 23, 24, 21, and 38.

Sixth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six of said coupons, due and payable on the first day of October, 1874, one coupon being detached from each of the following-named bonds, to wit, 1, 22, 23, 24, 21, and 38.

Seventh. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six coupons, due and payable on the first day of October, 1875, one coupon being detached from each of the bonds herein last named.

Eighth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six of said coupons, due and payable on the first day of October, 1876, one coupon being detached from each of the bonds herein last named.

Ninth. Defendant further promised to pay to bearer for value thirty-five dollars by each of the following six of said coupons, due and payable on the first day of October, 1887, one coupon
19 being detached from each of the bonds herein last named.

And plaintiff now comes and says that it is the owner and holder of each and all of said coupons, to wit, thirty coupons in number, each being payable at the dates specified above and each promising to pay bearer thirty-five dollars as aforesaid; which coupons he caused to be presented for payment at maturity, according to their terms, as herein set forth, at the office of the Bank of Commerce, in the city and State aforesaid, and payment in each and every case was refused. Wherefore defendant is indebted to plaintiff in the sum of ten hundred and fifty — ($1,050.00), and therefore it now comes into court and prays judgment thereon, with interest, damages, & costs of suit. He says that by and under the *the* laws of the State he is entitled to have and recover of defendant interest on the amount of said coupons from their maturity, respectfively, up to the date of judgment and payment, at the rate of seven per cent. per annum, for which plaintiff prays judgment.

Tenth. And plaintiff further avers that at the time of issuing and negotiating the same bond, No. 130, to wit, on the 1st day of February, 1868, and hereinbefore described in the first count of this petition, the defendant county issued, negotiated, and delivered to said railway company certain other bonds, with coupons thereto attached, which said bonds were numbered as follows, to wit, 95, 96, 97, 98, 99, 100, 161, 167, 181, 183, 209, 208, 207, 203, 204, 205, 202, 201, 200, 180, 184, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 206, 198, 199, 196, 197, each of said last-named bonds being for $500, dated February 1st, 1878 (1868); and also the following-named bonds, dated on February 1st, 1878, and each for the sum of $50, and numbered as follows, to wit, 381, 386, 387, 388, 389, 393, 156, 394, 129, 134, 180, 234, 342; and plaintiff says that all of said last-named bonds
20 are in all respects alike, similar to, and in the form of bond No. 130, heretofore described, except in the serial number by which they are distinguished and in the amounts which they respectively promise to pay, and they contain the same recitals as contained in said bond No. 130, and were issued under and by the same authority and negotiated in like manner, for stock subscribed by said county to said railway company, for which said county received certificates of stock in said railway company and for many years caused the same to be voted in the election of directors for said company.

Eleventh. And plaintiff says further that on the first day of October, 1877 (1867), the defendant county caused to be issued, negotiated, and dilivered to said railway company certain other bonds, each for $500, and dated on the 1st day of October, 1887 (1867), numbered as follows: 2, 3, 5, 6, 31, 32, 33; and also the following bonds, each dated October 1st, 1887 (1867), and each for the sum of $50, and numbered, to wit, 33, 35, 40, 41, 42, 43, 44, 45, 46, 69, 17, 99; all of which said bonds in this count named are payable ten years after the date thereof at the said Bank of Commerce, in the city and

State of New York, and said bonds contain the same recitals as set forth in the first count of this petition, excepting the number and dates thereof, and the said bonds and coupons attached, thereto attached, were in like manner issued under and by the same authority and negotiated in like manner as the bonds hereinbefore stated, for stock subscribed by said county to said railway company, for which said county received certificates of stock thereon and caused the same to be voted at the election of directors and other officers of said company; and *and* now plaintiff comes and says that — is the owner and bearer of the bonds hereinbefore named in the 10th and 11th counts of this petition, and now brings the same into court and prays judgment for the amount thereof, together with interest at seven
21 per cent. per annum, and damages thereon, and also for its costs of suit, the plaintiff having made demand of payment of all bonds described in the tenth and eleventh counts of this petition at said bank on the dates of their respective maturity & payment having been refused.

Twelfth. And the plaintiff further says that at the time of issuing and negotiating the bonds named in the tenth and eleventh counts of this petition there were attached to said bonds, as a part thereof, annual coupons expressing the interest on said bonds respectively at seven per cent., of which coupons the plaintiff is the holder and bearer for value as hereinafter expressed, to wit: The plaintiff is the owner and holder of ten coupons due Feb'y 1st, 1875, each for the sum of thirty-five dollars, attached as aforesaid to bonds Nos. 95, 96, 97, 98, 99, 100, 161, 167, 181, 183; and plaintiff is in like manner the owner and holder for value of ten coupons, each for ($35) thirty-five dollars, due February 1st, 1876, which were attached to the bonds herein last described; and plaintiff is in like manner the owner and holder for value of ten coupons, each for thirty-five dollars, due Feb'y 1st, 1877, which were attached to the bonds herein last described; and the plaintiff is in like manner the owner and holder of thirty-six coupons, due Feb'y 1st, 1878, each for the sum of thirty-five dollars, which said coupons were originally attached, one each to the bonds last named, and also to bonds Nos. 209, 208, 207, 203, 204, 205, 202, 201, 200, 180, 184, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 206, 198, 199, 196, and 197; and plaintiff says each of the aforesaid sixty coupons the defendant promised to pay bearer, at the said National Bank of Commerce, the sum of thirty-five dollars, which the plaintiff, as the owner aforesaid,
22 at the respective dates of payment of said coupons, presented at the place aforesaid for payment thereof — was refused by defendant. Wherefore plaintiff brings this suit and asks judgment of said coupons, with interest and costs.

Thirteenth. And plaintiff says that it is the owner and holder for value of fourteen other coupons, each for the sum of three $\frac{50}{100}$ dollars and originally attached to the bonds aforesaid, two of which said coupons became due February 1st, 1875, two of said coupons became due February 1st, 1876, two of them became due February —, 1877, each of said coupons being respectively attached to bonds No. 156 and 394, and eight of said fourteen coupons became due

February 1st, 1878, one of said coupons being originally attached to each of the following-named bonds, to wit, Nos. 156, 394, 381, 386, 387, 388, 389, 393; and plaintiff says by each of said coupons defendant promised to pay bearer, at the said bank, $3.50 *dollars* at the dates respectively named, and plaintiff, as owner of said coupons, presented the same at said bank at the date of their maturity respectively, and, payment thereof being refused by defendant, the plaintiff now brings his suit and prays judgment thereon, with interest at seven per cent., and its costs of suit.

Fourteenth. And plaintiff says it is the owner and holder for value of twenty-eight other coupons originally attached to bonds Nos. 2, 3, 5, 6, 31, 32, and 33, each of said coupons being for the sum of thirty-five dollars, of which coupons seven thereof became due October 1st, 1874, seven became due October 1st, 1875, seven became due October 1st, 1876, seven became due October 1st, 1877;

23 and plaintiff says that it is the owner and holder of all of said coupons, by each of which the defendant promised to pay to bearer the sum of thirty-five dollars at the said National Bank of Commerce, and plaintiff presented the same at said bank for payment at the time — maturity of said coupons, and, payment being refused, plaintiff now ask- judgment and seven per cent. interest thereon and damages thereon and for its costs of suit.

Fifteenth. And plaintiff says further that it is the owner and holder of forty-three other coupons originally attached to certain bonds hereinbefore described, each of said coupons being for the sum of $3.50 and due and payable as follows, to wit: One of said coupons due October 1st, 1871, and originally attached to bond No. 69; one due October 1st, 1872, attached to the same bond, and one due October 1st, 1873, and attached to the bond last named; (10) ten of said coupons due October 1st, 1874, one each attached to bonds Nos. 69, 33, 35, 40, 41, 42, 43, 44, 45, and 46, and ten of said coupons due October 1st, 1875, one each being originally attached to the bonds last named; ten of said coupons due October 1st, 1876, one each attached to the bonds last named, and ten of said coupons due October 1st, 1877, originally attached one each to the ten bonds last named. Plaintiff says by each of said coupons defendant promised to pay to bearer $3.50 at the dates respectively named and at the said National Bank of Commerce, and plaintiff, as the owner thereof, presented the same at the place stated and at the maturity thereof respectively, and, payment being refused, plaintiff now brings his suit and asks judgment thereon, with interest at seven per cent., and for its costs of suit.

And plaintiff further says that all of said bonds and coupons hereinbefore described in the petition were issued and negotiated

24 by the defendant county to the Missouri and Mississippi Railroad Company or bearer, as stated, and that said company was incorporated by special act of the General Assembly of Missouri, as hereinbefore stated, which said company was, at the time of the subscription — stock by said county and at the time of the issue of the bonds and coupons herein described, authorized and empowered by the terms of its charter to build, construct, and operate a railroad

from the town of Alexandria, in Clark county, Missouri, through the county of Knox and through the town of Edina, the county seat of said county, to some point on the Missouri river and connecting with the North Missouri railroad, which said railroad so authorized would run from Alexandria aforesaid in a southwest course through the said town of Edina, and through said county of Knox to a point on the Missouri river, and would intersect the North Missouri railroad at or near Macon City, in Macon county, Missouri; and plaintiff further avers that all of said bonds and coupons were authorized, issued, and negotiated by said defendant county under and by authority of orders of the county court of said county, duly entered on the records of said court, and under and by the authority of a special election of the qualified voters of said Knox county, duly ordered and held, under and according to the laws of Missouri, in said county on the 12th day of March, 1867, at which election five hundred and ten votes were duly and legally cast in favor of making the subscription to said company and of issuing therefor the bonds herein described and only ninety-eight votes were cast against the said subscription and issue of bonds. Wherefore plaintiff says that at said election, so called and held in said county according to law, more than two-thirds of the qualified voters of
25 said county assented to and authorized the subscription of stock to said company in the sum of one hundred thousand dollars, for the payment of which the bonds and coupons hereinbefore named were issued and negotiated, and said subscription and issue of bonds were made by said county court by virtue of said authority; and plaintiff further avers that from the year 1867 to the year 1874 and both inclusive the defendant county caused to be levied and collected thereon a tax sufficient to pay full interest on all the bonds issued by virtue of said subscription, and during the said period and thereafter, while said bonds and coupons were passing for full value into the hands of purchasers in the open market, the county court of said county and the people thereof admitted and declared by various and divers acts, both by record and *in pais*, that said subscription and issue of bonds were authorized and made by authority of said election. Wherefore plaintiff says that defendant is now estopped from declaring or averring to the contrary.

Therefore plaintiff comes as already prayed and again prays that a judgment be rendered in its favor for the amount of said bonds and coupons, with interest at seven per cent. thereon, and for its damages and costs, and that it be awarded a mandamus for the full collection of such judgment and costs as provided by law.

J. B. HENDERSON,
Att'y for Plaintiff.

Endorsed: No. 12. Ninth National Bank *vs.* Knox County. Amended and supplemental petition. Filed Dec. 28th, 1887. Geo. C. Moore, clerk.

26 Afterwards, to wit, on the 5th day of March, 1888, and during the regular November term, 1887, of said court, the following, among other, proceedings were had, to wit:

NINTH NATIONAL BANK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 12.

At this day comes the defendant, by its attorney, and files answer to plaintiff's amended petition.

Which said answer is in words and figures as follows, to wit:

Filing of Answer to Amended Petition.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri, November Adjourned Term, 1887.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant.

Answer to Amended Petition.

The defendant, for answer to the plaintiff's amended and supplemental petition filed in the above-entitled cause, *defendant* admits that it issued to the Missouri & Mississippi R. R. Company, on the 1st day of October, 1867, bonds to the amount of $—, of the denomination of $50 and $500 each, and on the 1st day of February, 1868, additional bonds to the amount of $—, of like denomination, in all amounting to the sum of —; that each of said bonds had ten coupons for the interest thereon at the rate of seven per cent. per
27 annum, payable annually, attached thereto, and each of said bonds was due and payable ten years after the date thereof, at the Bank of Commerce, in the city of New York, and the coupons were likewise payable at said bank; that said bonds were issued to said Missouri and Mississippi Railroad Company in payment of a subscription previously made by the county court of defendant to the capital stock of said Missouri and Mississippi Railroad Company for the sum of $100,000, and that said company was duly incorporated by special act of the General Assembly of the State of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865, and that the bond described in the first count of said petition was issued under and in pursuance to said act and an order of the county court of defendant; but defendant expressly denies that said bond, or any other bonds, was issued to said Missouri and Mississippi Railroad Company in payment of said subscription in compliance with a vote of the people of said county, as alleged in said petition.

Defendant denies that it has voted on the certificate of stock, as alleged. Defendant also denies that in each year and from year to year since the date of said bonds it has caused the necessary taxes to be collected in said county to pay the coupons on said bond or on all or any other bonds of the same issue, as alleged in said petition. It denies that it has collected any taxes to pay the coupons on said bond or any of said coupons or any other bond of the same issue, except the special tax of one-twentieth of one per cent. as au-

thorized by said special act under which said Missouri and Mississippi Railroad Company was incorporated, as alleged in said count.

28 Defendant, for answer to each and every other count in said petition, denies that the bonds described in said counts or any of them were issued under or by authority of a special election of the qualified voters of Knox county, duly ordered and held, *or* according to the laws of Missouri, in said county on the 12th day of March, 1867, or at any other time, or that the number of votes alleged was cast in favor of making the subscription described in said counts, or that two-thirds of the qualified voters of said county assented to or authorized the subscription of stock to said company in the sum of $100,000 or any other sum, or that the bonds and coupons described in said counts or any of them, or any of said bonds and coupons, were issued or negotiated in payment of the subscription described in said counts or any of said counts, or that said subscription and issue of bonds were made by the county court of Knox county by virtue of the authority alleged in said counts or any of them. Defendant denies that the bonds sued on, or any of them, were issued under or by authority of the assent of two-thirds of the qualified voters of said county, or that said subscription was made under or by authority of the assent of two-thirds of the qualified voters of said county. Defendant denies that the county court of said county or the people thereof admitted or declared by various or divers acts, either by record or *in pais*, that said subscription or issue of bonds was authorized or made by authority of the election alleged in said counts or any of them. Defendant denies that any election to obtain the assent of the qualified voters of said county to the subscription described in said counts was ever held.

29 For further defense to each and every count in said petition, defendant states that in and by the authority conferred upon the county court of Knox county by the 13th section of said special act under which said Missouri and Mississippi Railroad Company was incorporated and by no other authority or power the county court of Knox county, on the 13th day of May, 1867, upon the petition of said company, made an order authorizing the presiding justice of said court to subscribe for and in the name of the county of Knox one thousand shares of stock—*i. e.*, $100,000—in the capital stock of the Missouri and Mississippi Railroad Company upon the following terms and limitations, viz: 1st. That the sum of one-half of one per cent. of said stock be paid in cash. 2nd. That the remaining ninety-nine and one-half per cent. of said stock be paid in bonds of the county of Knox, bearing seven per cent. interest per annum and running ten years, with coupons attached, the interest on said bonds payable annually at the treasury of the county of Knox aforesaid, said bonds to be signed by the presiding justice of said county court and attested by the clerk thereof. That, in pursuance of said order, said presiding justice did, on the same day, subscribe said $100,000 in the capital stock of said company, and in payment thereof, on the first day of October, 1867, said county issued to said company bonds of the denomination of $500 and $50

each to the sum of $—, and on the 1st day of February, 1868, said county issued additional bonds of the denomination of $500 and $50 each to the sum of $—, making the aggregate sum of $99,500, each bond bearing interest at seven per cent. per annum and running ten years from its date, with interest coupons attached thereto, the interest on said bonds payable annually, interest and principal payable at the Bank of Commerce, in the city of New York.

30 Defendant says whether the bonds sued on are the same bonds issued by it to said Missouri and Mississippi Railroad Company, as aforesaid, it has no knowledge or information sufficient to form a belief. Defendant, for another and further defense to each and every of the bonds sued on and which bear date October the 1st, 1867, says that the cause of action thereon did not accrue within ten years before the commencement of this action.

JAMES CARR,
Attorney for Defendants.

Endorsed: No. 12. Ninth National Bank of New York *vs.* Knox County. Answer to amended petition. James Carr, attorney for def't. Filed Mar. 5, 1888. Geo. C. Moore, clerk.

Afterwards, to wit, on the 6th day of March, 1888, and during the regular November term, 1887, the following, among other, proceedings, were had:

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant.

Now, at this day, comes the plaintiff, by its attorney, and also comes the defendant, by its attorneys, and this cause coming on to be heard and both parties announcing themselves ready for trial, then came the following jurors of a jury, to wit: James Ranies, J. W. Arnold, J. F. Rice, Richard Conn, Charles E. Arnold, E. Caldwell, C. C. Cast, R. A. Curtright, J. W. Chinn, Samuel E.

31 East, C. G. Curtright, and George Morgan, twelve good and lawful men of the body of the northern division of the eastern judicial district of Missouri, duly elected, tried, sworn, and empannelled to try the issues joined herein; and now said jurors, having heard the testimony offered, are permitted to disperse, with instructions not to talk with each other or permit any one to converse with them in regard to this cause, but to return into court on to-morrow morning at 9.30 o'clock to resume the trial of this cause.

Afterwards, to wit, on the 7th day of March, 1888, and during the regular November term, 1887, of said court, the following, among other, proceedings were had:

Withdrawal of Bonds and Coupons.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant.

Now comes the plaintiff, by its attorney, and by leave of the court withdraws the following bonds and coupons sued upon, to wit, bonds Nos. 2, 3, 5, 6, 31, 32, and 33, each for $500.00, due Oct. 1st, 1887, with coupons from Oct. 1st, 1874, to Oct. 1st, 1877; bonds Nos. 33, 35, 40, 41, 42, 43, 44, 45, and 46, each for $50.00, due Oct. 1st, 1877, with coupons from Oct. 1st, 1874, to Oct. 1st, 1877, inclusive; bonds No. 17 and 99, for $50.00 each, due Oct. 1, 1877, with no coupons; bond No. 69, for $50.00, due Oct. 14, 1877, with coupons from Oct. 1st, 1871, to Oct. 1st, 1877, inclusive, and also 10 coupons, each for $35.00, due Feb'y 1st, 1875; also 10 coupons due Feb'y 1st, 1876, and 10 coupons due Feb'y 1st, 1877, all attached to the following bonds, to wit: Nos. 161, 167, 181, 183, 95, 96, 97, 98, 99, and 100, and also 6 coupons, each for $35.00, due Oct. 1st, 1873; one each from the following bonds, to wit, Nos. 1, 21, 22, 23, 24,
32 and 38, and also ten coupons due Feb'y 1st, 1875; 2 coupons due Feb'y 1st, 1876, and 2 coupons due Feb'y 1st, 1877, each for $3.50, detached from bonds Nos. 156 and 394.

Afterwards, to wit, on the same day, the following proceedings were had, to wit:

Trial of Cause and Judgment.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant. } 12.

Now, at this day, again came the parties, by their respective attorneys, to wit, the plaintiff by John B. Henderson, Esq., and the defendant by James Carr, Esq., and W. C. Hollisler, Esq., its attorneys, and also come a jury of good and lawful men, to wit, James Ranies, J. W. Arnold, J. F. Rice, Richard Conn, Charles E. Arnold, E. Caldwell, C. C. Cast, R. A. Curtright, J. W. Chinn, Samuel E. East, C. G. Curtright, and George Morgan, who, heretofore being duly examined and found competent and qualified as such, were properly sworn to try the issue joined between the parties; and thereupon there was submitted to said jury the pleadings and evidence adduced by the parties, and at the same time the court submitted the following special issues to be considered and found by the jury, to wit:

1st. Was an election of the people held in Knox county to authorize the subscription of one hundred thousand dollars to a railway company running on the line of the Missouri and Mississippi Railroad Company previous to the issue of the bonds sued on?

2nd. If such an election were held, did two-thirds of the qualified voters voting at said election vote for the issue of said bonds?

3rd. In issuing the bonds sued on, did the county court
33 of Knox county intend to issue them under the authority of such election?

4th. Whether such was the intention of the county court or not, do the facts and circumstances connected with the issue of the bonds, together with the records of the county, constitute an estoppel such as to prevent the county court from now denying that an election was held?

And after hearing the evidence in the cause and the argument of counsel and instructions of the court the jury retired to consider the same, and thereupon returned the following verdict, to wit:

"We, the jury, find for the plaintiff and asses- its damages as follows:

On first count in sum of $853.50 on bonds.
On 2nd count in sum of 5,974.50 on bonds.
On 3rd count in sum of 5,191.00 on bonds.
On 9th count in sum of 1,441.44 on coupons.
On 11th count in sum of 31,835.55 on bonds.
On 12th count in sum of 2,023.56 on coupons.
On 13th count in sum of 44.97 on coupons.

R. A. CURTRIGHT, *Foreman.*"

First. Were the bonds sued upon in this case issued by the county court of Knox county solely in pursuance of power conferred by the 13th section of the Mo. & Miss. R. R. charter? Answer. No.—R. A. Curtright, foreman.

Second. In issuing the bonds sued upon did the county court of Knox Co. intend to issue the same pursuant to power conferred by section 17 of the gen. railroad law in force on May 13th, 1867, and in accordance with a vote of the people of Knox Co. authorizing such issue? Answer. Yes.—R. A. Curtright, foreman.

Third. Was an election held in Knox Co., Mo., previous to the issue of the bonds in suit to authorize a subscription of one
34 hundred thousand dollars to the stock of a railroad corporation running on the line of the Mo. & Miss. R. R. as projected? Answer. Yes.—R. A. Curtright, foreman.

Fourth. Did two-thirds of the persons voting at such election vote in favor of such subscription & the issuance of bonds to pay for the same? Answer. Yes.—R. A. Curtright, foreman.

And the jury being duly polled, upon motion of the defendant, each juror separately answered that such was his verdict, which verdict was duly received and recorded; and it is therefore considered and adjudged by the court that the bonds and coupons sued upon by plaintiff were duly issued by the defendant county under and by authority of order of the county court for that purpose and under and by authority of a special election of the qualified voters of said county duly ordered and held in said county for that purpose, at which more than two-thirds of such qualified voters voting at said election voted for the subscription of stock and issue of said bonds and coupons, as charged in plaintiff's petition; and, further, said bonds and coupons, together with the subscription aforesaid, were

duly authorized by a vote of the qualified voters of said county, taken according to the laws of the State of Missouri; and the court doth thereupon further consider, adjudge, and determine that the plaintiff have and recover of the defendant the sum of forty-seven thousand three hundred and sixty-four ($47,364.52) and $\frac{52}{100}$ dollars, being the total damages assessed by the jury on the several counts of the petition, as appears by their verdict heretofore returned and recited, and that execution issue therefor, and also for costs, against the defendant; and the court doth further adjudge and de-
35 termine that the above amount so as aforesaid found and adjudged to be due—the sum of forty-three thousand eight hundred and fifty-four dollars and fifty-five cents ($43,854.55)—bear interest at the rate of seven (7) per cent. per annum until paid, and the residue at the rate of six (6) per cent. per annum, also until paid.

Afterwards, to wit, on the 8th day of March, 1888, and during the regular November term, 1887, of said court, the following, among other, proceedings were had, to wit:

Filing Motion for New Trial & Continuance.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant. } 12.

Now, at this day, comes the defendant, by its attorneys, and files motion for a new trial in this cause; and now it is ordered by the court that said motion for a new trial be continued until the next term of this court; which said motion for a new trial is in words and figures as follows, to wit:

Motion for a New Trial.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri, November Adjourned Term, 1887.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant.

Now, at this day, comes the defendant and moves the court to make an order to set aside the finding of the jury upon the
36 special issues submitted to it in the above-entitled cause and grant a new trial therein for the following reasons:

1st. The court erred in the admission of evidence on the part of the plaintiff on the trial of such special issues.

2nd. The court erred in excluding evidence offered by defendant on the trial of said issues.

3rd. The jury found said issues in favor of the plaintiff, contrary to the great weight of evidence.

4th. The court erred in refusing to give the instructions and each of them to the jury as requested by the defendant.

5th. The court erred in its charge to the jury.

6th. The jury should have found said special issues & each of them in favor of the defendant instead of the plaintiff.

7th. The jury erred in finding interest on the bonds sued on, after their maturity, at the rate of seven per cent. *cent.* per annum, contrary to the contract specified in said bonds, when they should have found interest on said bonds after their maturity at the rate of six per cent. per annum.

JAMES CARR,
Att'y for Defendant.

Endorsed: No. 12. Ninth National Bank of New York, pl'ff, *vs.* Knox County, def't. Motion for new trial. James Carr, attorney for defendant. Filed Mar. 8, 1888. Geo. C. Moore, clerk.

Afterwards, to wit, on the 8th day of March, 1888, and during the regular November term, 1887, of said court, the following, among other, proceedings were had, to wit:

37 *Filing of Motion in Arrest & Continuance.*

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant. } 12.

Now, at this day, comes the defendant, by its attorneys, and files motion in arrest of the judgment herein entered, and now it is ordered by the court that said motion in arrest of judgment be continued until the next term of this court.

Which motion in arrest of judgment is in words and figures as follows, to wit:

Motion in Arrest.

In the Circuit Court of the United States for the Northern Division *for* the Eastern District of Missouri, November Adjourned Term, 1887.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant.

Now, at this day, comes the defendant and moves the court to arrest the entering of judgment on the issues found by the special verdict of the jury in the above-entitled cause for the following reasons:

1st. Because the plaintiff by failing to reply and deny the special defence set up in the defendant's answer herein, that the subscription of $160,000, made by the county court of Knox county on behalf of said county on the 13th day of May, 1867, and the bonds sued on were issued in part payment of said subscription under and by au-

thority of the special act alone, under which the Missouri and Mississippi Railroad Company was incorporated, conclusively
38 admitted said facts to be true, and the special findings of the jury are repugnant to and contradictory of the facts thus admitted.

2nd. Because the plaintiff, by failing to deny the facts alleged in the special defence set up in defendant's answer herein, conclusively admitted said facts to be true, and the plaintiff was and is thereby estopped from proving any facts contrary to said admitted facts, and said plaintiff should not have been allowed upon the trial to prove any facts contradictory to the facts thus admitted.

JAMES CARR,
Att'y for Defendant.

Endorsed: No. 12. Ninth National Bank of New York, pl'ff, *vs.* Knox County, def't. Motion to arrest judgment on special finding of the jury. James Carr, attorney for defendant. Filed Mar. 8, 1888. Geo. C. Moore, clerk.

Afterwards, to wit, on the same day, the following, among other proceedings, appears, to wit:

Filing of the Bonds and Coupons.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri. } 12.

Now, at this day, comes the plaintiff, by its attorney, and files sixty-three (63) bonds and sixty-eight (68) coupons attached to said bonds and upon which this suit is predicated.

Afterwards, to wit, on the 11th day of September, 1888, and during the regular May term, 1888, of said court, the following, among other, proceedings were had:

39 *Motion for New Trial Submitted & Overruled.*

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 12.

Now, at this day, comes the plaintiff, by its attorney, and also comes the defendant, by its attorneys, and the defendant's motion for a new trial herein coming on to be heard and the same being duly submitted to the court, and the court, having seen and heard the same and being fully advised thereof, doth order that said motion be, and the same is hereby, overruled.

Afterwards, on the same day, the following, among other, proceedings were had, to wit:

Motion in Arrest Submitted & Overruled.

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 12.

Now, at this day, comes the plaintiff, by its attorney, and also comes the defendant, by its attorney, and the defendant's motion in arrest of the judgment herein entered coming on to be heard, and the same being duly submitted to the court, and the court, having seen and heard the same and being fully advised thereof, doth order that said motion be, and the same is hereby, overruled.

Afterwards, to wit, on the same day, the following, among other proceedings were had, to wit:

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, Defendant. } 12.

40 *Leave to File Bill of Exceptions.*

Now, at this day, comes the defendant, by its attorneys, and, on motion of said defendant, it is ordered by the court that said defendant have leave to file bill of exceptions in this cause on or before the fourth Monday in October, 1888.

Afterwards, to wit, on the 22nd day of October, 1888, and during the regular May term, 1888, of said court, the following, among other, proceedings were had, to wit:

Order of Court Allowing Bill of Exceptions to be Presented at Dec. Term, A. D. 1888.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant. } 12.

Now, at this day, it appearing to the satisfaction of the court that the defendant, by its attorney, had prepared its bill of exceptions herein and delivered it to the plaintiff's attorney to examine and note his objections thereto, if he had any, before the 22nd day of October, 1888, the day to which the court was adjourned to and on which leave was heretofore given to file a bill of exceptions herein, and that the plaintiff's attorney, in consequence of urgent business, did not have time to examine said bill with care; and it further appearing to the satisfaction of the court that the plaintiff and defendant, by their respective attorneys, have agreed by written stipulation that said bill of exceptions may be considered, signed, sealed, and allowed by the court at its next term, to wit, the December term, 1888, of this court, at Hannibal, Missouri, and when so signed, sealed, and allowed it shall have the same effect as if it had been

signed, sealed, and allowed at the present term of this court:
41 It is therefore considered and ordered by this court that the defendant shall have the right and privilege to present said bill of exceptions to the court at the next December term thereof and have it signed, sealed, and allowed, and when so done it shall have the same effect as if it had been signed, sealed, and allowed and made a part of the record herein during the present term of this court.

Afterwards, to wit, on the 3rd day of December, 1888, and during the regular December term, 1888, of said court, the following, among other, proceedings were had:

Filing Bill of Exceptions.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant. } 12.

At this day comes the defendant, by its attorney, James Carr, Esqr., and the plaintiff, by its attorney, James M. Lewis, Esq., and the defendant presents its bill of exceptions, which is signed, sealed, and allowed and ordered to be made a part of the record in this cause.

Which said bill of exceptions is in words and figures as follows, to wit:

42 *Bill of Exceptions.*

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri, November Adjourned Term, 1887.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant.

Evidence of Plaintiff; Agreement.

Be it remembered that on the 6th day of March, 1888, the above-entitled cause came on for trial on the issue joined on the plaintiff's amended and supplemental petition filed in said cause and the defendant's answer to said petition. The plaintiff, to maintain the issue on its part, read, by agreement, the certificate of Henry R. Parsons and Philip B. Linville that the signatures of William F. Plumer, as presiding judge, and James C. Agnew, as clerk, to the bonds sued on are the genuine signatures of said persons. The plaintiff next read in evidence one of said bonds. The following is a copy of one of said bonds, the others being identical in tenor and effect, the only difference being the serial number and amount of bonds:

Know all men by these presents the County of Knox, State of

Missouri, acknowledges itself indebted to the Missouri & Mississippi Railroad Company (organized by an act of the General Assembly of the State of Missouri) or bearer in the sum of five hundred dollars, which sum the said county promised to pay, at the National Bank of Commerce, in the city of New York, on the first day of Feb'y, 1878, with interest at seven per cent. per annum, which interest shall be payable annually on presentation of the coupon
43 hereto annexed at said National Bank of Commerce, in the city of New York, this bond being issued under and pursuant to order of the county court of Knox county for subscription to the stock of the Missouri & Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri entitled An act to incorporate the Missouri & Mississippi Railroad Company, approved Feb'y 20th, 1865.

In testimony whereof the said County of Knox has executed this bond by the presiding justice of the county court of Knox county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court. Thus done, at the city of Edina, county and State aforesaid, this first day — Feb'y, 1868.

Registered in Bond Book, page 3.

JAMES C. AGNEW, *Clerk.*
W. F. PLUMNER,
Presiding Justice of the County Court of Knox County.

The plaintiff next read in evidence section- 1, 7, and 13 of an act entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865, which are as follows:

Act to Incorporate M. & M. R. R. Co.

SECTION 1. A railroad company is hereby incorporated under the name and style of the Missouri and Mississippi Railroad Company, with a capital stock of four millions of dollars, divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body corporate and politic, and by the name aforesaid shall have continued succession; may sue
44 and be sued, plead and be impleaded, defend and be defend*ant* against in all courts in this State and elsewhere, and shall be able in law and equity to make and enter into contracts and become invested with the title to real and personal property, and to sell and convey the same for this purpose, and use a common seal, and may make such by-laws, rules, and regulations as the directors of said company may ordain and establish from time to time for the purpose of carrying this charter into effect.

SEC. 7. Said board of directors shall have full power and authority to survey, mark out, locate, and construct a railroad from the town of Macon, in the county of Macon, in the State of Missouri, through the town of Edina, in the county of Knox, in said State, and thence to or near the northeast corner of said State, in the direction of Keokuk, in Iowa, or Alexandria, Missouri, and for such pur-

pose may obtain by grant, gift, or donation any quantity of land for the purpose of a road-bed not exceeding one hundred feet wide, depots, warehouses, machine shops, water stations and turnouts, and may select such route as they may think best.

SEC. 13. It shall be lawful for the corporate authorities of any city or town, the county court of any county desiring so to do, to subscribe to the capital stock of said company and may issue bonds therefor and levy a tax to pay the same, not to exceed one-twentieth of one per cents. upon assessed value of taxable property for each year.

The plaintiff then read in evidence an order of the county court of Knox county made on the 6th day of February,
45 1867, as follows:

Order of Co. C't, Knox Co.

Now, at this day, is presented to the court a petition signed by persons asking this court to order an election for the purpose of ascertaining the sense of the qualified voters of Knox county in regard to this court subscribing one hundred thousand dollars for the purpose of constructing a railroad through Knox county; and the court, after hearing said petition read in open court and being fully advised in the premises, do order an election to be held on the Tuesday after the second Monday in March next, at the various precincts in said Knox county, to ascertain the sense of the people of Knox county as to whether or no they do authorize the county court of the county of Knox to subscribe stock to the amount of one hundred thousand dollars to a railroad company which may construct a railroad running from West Quincy, in this State, thence west through Knox county to some point on the Missouri river, or in a company which may construct a railroad running from Alexandria, in this State, southwest through Knox county to intersect the North Missouri railroad at or near Macon City, or in any other railroad company which may duly organize under the laws of this State and may construct a railroad through Knox county, running through Edenia and connecting with the North Missouri railroad, or running to Quincy, in Illinois, or Macon, Missouri, or any point on the Missouri and Mississippi rivers, the stock to be taken being subject to the condition that it shall be payable in county bonds bearing seven per cent. interest and running ten years, and
46 the further condition that all monies arising from the sale of said bonds shall be expended in the construction of said railroad within the county of Knox aforesaid; and further ordered that public notice of this order of court be given through the Missouri Watchman for five weeks and by printed handbills publicly exposed throughout the county; and further ordered that the ballots be printed or written as follows:

Shall the court subscribe one hundred thousand dollars? "Yes."
Same. Same. Same. "No."

Plaintiff then read an order of the Knox county court, Missouri, made and entered on the record on the 8th day of February, 1867, which is in words and figures as follows:

Order of Knox Co. Court, Feb. 8, 1867.

"It is ordered by the court that the same persons who were appointed judges of the general election in November, 1866, be, and are hereby, appointed judges of the special election to be held on the Tuesday after the second Monday in March next (12th inst.) for the purpose of ascertaining the sense of the citizens of Knox county as to this court subscribing for Knox county $100,000 in a railroad company for building a railroad through Knox county. Ordered that certificates of appointment be issued by the clerk to said judges under the seal of this court, and further ordered that the clerk make out poll books for the several precincts in Knox county and deliver them to the sheriff of the county for distribution."

Plaintiff then read in evidence an order of the county court of Knox county, Missouri, made and entered of record on the
47 4th day of March, 1867, which is in words and figures as follows:

Order Knox Co. C't, Mar. 4, '67.

Now, at this day, it is ordered by the court that the order made heretofore, to wit, on the sixth day of February, 1867, in regard to the county court subscribing stock to the amount of one hundred thousand dollars to some railroad company who may construct a railroad through Knox county be amended so as to read as follows, to wit:

"The order of this court made on the 6th day of February, 1867, ordering an election to be held at the various election precincts of Knox county on the Tuesday following the second Monday in March, 1867, for the purpose of determining as to whether or no the county court should be authorized to subscribe one hundred thousand dollars to some company which might construct a railroad running through Knox county, is hereby amended so as to read as follows: It is hereby ordered by the county court of Knox county that an election be held at the various election precincts in Knox county on the Tuesday after the second Monday of March, 1867, to ascertain the sense of the qualified voters of said county as to whether or not they do authorize the county court of said Knox county to subscribe stock to the amount of one hundred thousand dollars in any railroad company which may construct a railroad running from West Quincy, in this State; thence west through Knox county, and running through Edina, the county-seat of said Knox county, to some point on the Missouri river; or in a company which may construct a railroad running from Alexandria, in
48 this State, southwest through Knox county and through Edina, the county-seat of said Knox county; thence west so as to intersect the North Missouri railroad at or near Macon City; or

in any other railroad company which may duly organize under the laws of the State and which may construct a railroad running through Knox county and through Edina as aforesaid and connecting with the North Missouri railroad, or running through Knox county and through said Edina to Quincy, Illinois, or Macon City, Missouri, or to some point on the Mississippi or Missouri river, the stock to be taken to be subject to the conditions that it shall be payable in county bonds, bearing 7 per cent. interest and running ten years, and that all moneys arising from the sale of said bonds shall be expended in the construction of a railroad within the county of Knox aforesaid; and further ordered by the court that the ballots or tickets voted to be marked as follows, viz:

Shall the county subscribe one hundred thousand dollars to the railroad? 'Yes.'

Shall the county subscribe one hundred thousand dollars to the railroad? 'No.'

And further ordered by the court that so much of the former order made by this court February 6, 1867, in relation to said subscription, &c., as conflicts with this order be, and the same is hereby, revoked."

The plaintiff next offered to read in evidence an entry from the records of said county court made on the 18th day of March, 1867, as follows:

Entry from Record of Court, Mar. 18, '67.

49 "In vacation. The clerk of this court, in conjunction with Joel Seever and David Bunnell, two justices of the peace within and for the county of Knox, on the 18th day of March, 1867, proceeded to count the votes cast at the special election held on the 12th day of March, 1867, at the various election precincts for the purpose of ascertaining the sense of the legal voters of Knox county as to whether the county court should subscribe $100,000 to any railroad company *who* would build a railroad through Knox county, and find the vote as follows:

Greensburg township: For subscription—		yes, 32 votes; no, 11 votes;
Lynn township:		yes, 48 votes; no, 1 vote;
Salt River	"	yes, 31 votes; no, 38 votes;
Jeddo	"	yes, 52 votes; no, none.
Benton	"	yes, 101 votes; no, 4 votes;
Centre	"	yes, 225 votes; no, 7 votes;
Fabius	"	yes, 21 votes; no, 35 votes;

showing by the votes recorded in the poll books, as counted and received by us, that there were cast for subscription of stock by Knox county five hundred and ten votes (510 votes), and that there were

cast against subscription of stock by Knox county ninety-eight votes (98 votes).

We certify the above to be a correct statement of the number of votes cast at the special election for and against the proposition for the county court of Knox county to subscribe $100,000 to the railroad.

Given under our hands the date above written.

(Signed) JAMES C. AGNEW, *Clerk.*
JOEL SEEVER, *J. P.*
DAVID BUNNELL, *J. P.*"

50 To the reading of this entry defendant objected:

First. Because it is a copy of what purports to have been a certificate given by the clerk of the county court and two justices of the peace of Knox county of the number of votes cast at the special election held on the first Tuesday after the second Monday of March, 1867, to ascertain the sense of the qualified voters of Knox county upon the proposition to subscribe $100,000 to some railroad, and there is no evidence that the original certificate is either lost, destroyed, or cannot be found so as to entitle the plaintiff to read said copy in evidence.

Second. Because said certificate does not relate to any action or proceeding of the county court of Knox county, and the clerk thereof had no authority to copy it into the book containing the record of the proceedings of the county court of said county.

Third. Because there is no law authorizing said clerk and justices of the peace to make said certificate, and it is illegal and void.

Fourth. Because said certificate is no legal evidence that the county court of Knox county ever passed upon the validity of said election, and it is irrelevant and incompetent to prove any issue in the case.

These objections were overruled, and said entry was permitted to be read in evidence; to which ruling of the court the defendant at the time excepted.

The plaintiff next read in evidence an order of the county court made on the 13th day of May, 1867, which is in words and figures as follows:

Order of Co. C't, May 13, '67.

51 "Now, at this day, it is ordered by the court that the president justice of this court be, and is hereby, authorized to subscribe for and in the name of county of Knox for the use of the inhabitants thereof one thousand shares of stock in the capital stock of the Missouri and Mississippi Railroad Company upon the following terms and limitations: 1st, that the sum of one-half of one per cent. of said stock, being one hundred thousand dollars, be paid in cash to defray expense of survey of said road through Knox county; 2nd, that the remaining 99½ per cent. of said stock be issued in bonds of the county of Knox, bearing seven per cent. interest per annum and running ten years, with coupons attached, the interest on said bonds payable annually at the treasury of the county of Knox afore-

said; said bonds to be signed by the president justice of said county court and attested by the clerk thereof and made payable to said railroad company upon order of the president and directors thereof, but in no case shall bonds be issued except for work actually done on said railroad within the limits of said Knox county, which am't of work shall in all cases be shown by the estimates of the engineer of said road, verified by his affidavit, which said estimates shall be filed in the office of the clerk of this court."

The plaintiff next read in evidence order of the county court levying taxes for the year- 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, whereby tax levies were made to pay interest on bonds issued to said railroad company as follows:

Order of Co. C't Lev-ing Taxes.

52	In the year 1868	30	cts. on each	$100.
	" " 1869	30	" "	"
In the year 1870		30⅓	cts. on each	$100.
" " 1871		50	" "	"
" " 1872		50	" "	"
" " 1873		25	" "	"
" " 1874		75	" "	"
" " 1875		5	" "	"

Plaintiff, by its counsel, here read the decision of the supreme court of Missouri in the case of The State *ex rel. vs.* Shortridge *et al.*, delivered in May, 1874, and reported in 56 Mo., p. 126, limiting the power of the county court to the levy of a tax of 1–20 of one per cent. to pay certain bonds issued to the M. & M. R. R. Co., and it was admitted that the order made on the 23d day of April, 1874, levying 75 cents on the $100, was on the first day of June, 1874, set aside and a levy of 5 cent- on the $100 made to pay said bonds. Plaintiff next read in evidence, by agreement, the testimony of William F. Plummer as reported in the case of The United States *ex rel.* Geo. W. Harshman *vs.* The County Court of Knox County, &c., which is in words and figures as follows:

Testimony of W. F. Plummer.

W. F. PLUMER, sworn for the relator, testified as follows:

Direct examination by Mr. SKINKER:

I live in Van Buren county, Iowa, and have lived there thirteen years the last of this month. I went there in 1870. Prior to that time I lived in Knox county, Missouri, and was a justice of the county court of that county part of the time I lived there—from about 1864 to 1870. I was one of the judges of the county court when the subscription was made which has been referred to. The other judges were Sylvester Schultz and Thomas O. Wamsley.
53 James C. Agnew and John B. Poque were clerks of the court. Mr. Schultz is here in the court-room and Mr. Wamsley is

dead. Mr. Agnew, the clerk, is also dead; he died about 1868 or 1869. I have heard the order of May 13th, 1867, read.

Q. Do you remember the making of that order?

Ans. Yes, sir; I do not remember positively the date. I recollect the order.

Q. As one of the justices of the court you participated in it?

A. Yes, sir.

Q. How did this subscription of May 13th come to be made?

A. It was made, my recollection of it now, under a vote of the citizens of that county at an election prior to that time.

Q. Do you recollect the date of that vote?

A. No, sir.

Q. Do you recollect how long prior to that time the vote had been taken?

A. The vote was taken in the spring and that order was made afterwards, in the same spring, if I recollect right. I cannot recall the dates of that time—that long back.

By the COURT:

Q. How came you to make the order?

A. Well, from the election, for the vote had taken place, and the order was made, from my recollection now of the circumstances, to carry out the vote that was had in the early part of the spring.

Q. Why did you submit to the vote of the people this question whether you should subscribe?

A. By petition and request of the citizens.

By Mr. SKINKER:

Q. Why did you not act upon your own responsibility in the matter?

54 A. We would not take the responsibility to issue bonds to any railroad without a vote from the people of the county—tax-payers, those who were interested.

Q. Now, you heard the record read here this morning showing the submission of the question to the people during that winter. When you say you would not take the responsibility of making the subscription without the vote, do you mean to refer to those proceedings, or what do you mean in that respect?

A. I do not know as I can state it in that question, hardly. There was a desire for a railroad in the county, and that desire was put in the shape of a petition presented to the county court, and the county court made the order for the election and afterwards subscribed under that. That is my recollection of the matter.

Q. The subscription that you speak of as having been made, when did that occur?

A. I think it was about 1867 or 1868. I cannot give you the date.

Q. The record which was read this morning fixes it.

A. The record read this morning is my recollection of the orders entered at that time; thirteen years' absence since I have been out of the county. I have no dates to go by.

Q. Do you know whether bonds were actually issued under that order or not?

A. Yes, sir; there were bonds issued under those orders.

Q. Do you know who signed those bonds?

A. Yes, sir; those that were issued under those orders—that is, regular county court orders.

Q. Have you examined any of the bonds recently with a view of ascertaining which bonds were issued under that order?

A. I have examined some bonds here.

Q. Here is a bond, No. 87, marked Filed March 15th, 1881;
55 M. M. Price, clerk. Look at that bond and see who signed it and who issued it and under what order it was issued (handing bond to witness).

A. I believe that is one of the bonds. The signature of mine is genuine, I believe; I cannot swear to anybody's signature.

Q. Now, that bond is dated the 1st day of February, 1868. Have you any means of fixing the exact date when the bond was issued?

A. Only by the records of the office, I think.

Q. Here is another bond, No. 102, marked "Filed March 15th, 1881; M. M. Price, clerk." What do you say about that as to how that came to be issued and who issued it (handing bond to witness)?

A. That was issued the same as the other, so far as I can see without comparison with the entry on the face.

Q. Do you know under what orders these bonds that are dated February 1st, 1868, were issued (handing 58 bonds to witness)?

A. The first order made, if I recollect right, issued 58 (?), or about that; then there was a second subscription of $30,000, and another subscription of $55,000. That was as far as my connection with the court went.

Q. Can you tell under which of these orders the bonds were issued?

A. Not by examining the bonds; I would have to refer to the bond book that was or is in the county clerk's office in Knox county.

Q. If you would see the bond book could you identify it?

A. I do not know. I believe that that is the book (referring to a book shown witness); the clerk of the county court will say for certain.

Q. I will ask you if you or either of your brother judges was a lawyer, or if the clerk of the court was a lawyer.

56 A. Neither of us was a la-yer; all three were farmers. The clerk of the court had been clerk of different courts before, but was not a lawyer.

Q. You have seen the bonds and have noted the recital contained in them?

A. Yes, sir.

Q. I will ask you if you know how that recital came to be put in those bonds.

A. I do not. I never saw the bonds or the form until after they were lithographed in St. Louis.

Q. Did you have anything to do with ordering the form in which they should be drawn up?

A. We left it to the clerk of the court, Judge Agnew, to attend to getting up the bonds. As to the form of the bonds, I do not know where he got that.

Q. You signed all those bonds. When you came to sign those bonds was your attention specially called to that recital?

A. Nothing more than the examination of it myself.

Q. Going back to the subject that was first spoken about, you say you were unwilling to take the responsibility of making the subscription without taking the sense of the people?

A. That is what I recollect now.

Q. As to the subscription made on the 13th of May, 1867, what have you to say about that?

A. My recollection is that we were acting under the vote of the county in making that order.

Q. Was it your intention in making that subscription to carry out the vote or act upon your own responsibility in the matter?

Defendant's counsel objects to the question.

The COURT: Perhaps you can get at it more closely if the gentleman remembers so far back, that there were two acts they
57 might have acted under, and whether, having made that recital, they meant it or made a mistake.

By Mr. SKINKER:

Q. I will ask you if you considered the matter of taxation at that time.

A. My recollection is that we made the subscription under the vote and supposed it to be under the general law, and proceeded to make a levy to pay the interest and assist in paying off the bonds. That is my recollection of the first $100,000.

Q. Then, when this bond came to be signed up—if there is anything in the bond to the contrary, I will ask you whether it was or was not put in there by mistake.

A. I stated that I never saw that form until the blanks were in the court-house, in the office, and our county attorney was satisfied with them. We were not lawyers and we signed those bonds supposing them to be correct—that they were "all right," in common parlance.

Q. Now, if there is anything in that bond that means that you did not proceed under that vote that was taken on the 12th of March, I ask you whether it was properly put in there or not.

Defendant's counsel objects to the question.

By the COURT:

Q. How came it to be put in there?

A. That was the form of bond that was gotten up for the purpose of issuing the bonds on, in that shape, and we supposed that the bonds were right, not being lawyers. Our attorney was satisfied

with the bond, and we didn't know that there was any mistake in them or whether there was not.

By Mr. SKINKER:

Q. Was it your purpose to put into the bond anything that
58 would imply that you were not proceeding under the vote of the people?

A. I believe not. According to my recollection, the intention was that those bonds should conform with the vote—that is, we intended to carry out the vote of the people in issuing the bonds, acting as servants for the people, for the county.

Q. And if anything was put in them by the man who drew that bond up to the contrary of that—I ask you if you signed that bond knowingly—knowing there was something in there to the contrary?

A. Not that I recollect now.

Q. I will ask you if the recital here about the act incorporating the Missouri and Mississippi River Railway Company was discussed at that time in your court, among your officers.

A. Not that I recollect of, in court.

Q. Was anything else said about it elsewhere?

A. The county attorney and the clerk of the court and myself discussed a little about it, in regard to the amount of tax that was levied in the act.

Q. What passed on that subject?

A. The tax was so small that the bonds would be worthless, and the attorney thought we had a right to go on under the regular statute, the same as we had been going on in the way of levying taxes to pay the interest.

Q. You say that the tax would be so small. What tax do you refer to?

A. To the clause in the charter of the company of one-twentieth of one per cent.

Q. How much would that tax have yielded in Knox county?

A. I cannot say now.

59 Q. Can you say approximately?

A. No, sir.

Q. Do you know about what the valuation of the property was there?

Ans. I have forgotten now.

Q. The conclusion was that the tax was so small that the bonds would be worthless?

A. That they would not sell in the market.

Q. If you issued them under that charter?

Mr. REYNOLDS: That is not what he said at all.

By Mr. SKINNER:

Q. What idea did you mean to convey?

A. We had commenced under the general statute with a vote, and in the discussing about the levy of the taxes—this discussion I

have reference to was between the county attorney and the clerk, who is now dead, outside the court.

Q. What was the discussion?

A. As near as I can recollect, the attorney said we had a right to go on and levy sufficient to pay the interest under the general law and ignore the twentieth part of one per cent.

Q. Altogether?

A. I- making our levy; and we proceeded in that way afterwards. I do not recollect who was present; there were one or two; we were sitting in the clerk's office at the time.

Q. Was it understood at that time that there was anything in this bond to indicate that you did not proceed in issuing it under the general law, in pursuance of that vote?

Defendant's counsel objects to question.

By the COURT: How came you to issue that bond in that form?

A. This bond was lithographed and fetched in the office
60 of the county clerk and county attorney, that we depended on for the form—presented that to us. I was not and my associates were not lawyers, and accepted that form.

By Mr. SKINKER:

Q. That was under the seal of your court?

A. Yes, sir.

Q. There is a recital that you proceeded under the special act and the charter of the road. How came you to put it in there?

A. That is not worded exactly as I thought it was. I thought that this should have been that the bond was issued to the railroad company authorized by a certain act, but we were acting under a general law, under a vote—under a general law to raise this money for these bonds; to issue them and raise the money to pay the interest on them.

Q. "This bond being issued under and pursuant to the order of the county court of Knox county for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri, entitled," &c. What, do you mean to say "as authorized," and so on, refers to how?

Defendant's counsel objected to the question as incompetent. Objection sustained.

Q. I will ask you again: How did that clause come to be in this bond?

Ans. I don't know. I never saw the bond or forms until they were lithographed.

Q. You had nothing to do with putting them in?

A. No, sir; not in making up the forms of the bonds.

Q. Does the bond indicate on its face where it was litho-
61 graphed?

A. In St. Louis.

Q. By whom?

A. Gast, Miller & Co.

Q. Then, for all you know, the bond was drawn up by Gast, Miller & Co.?

A. I do not know where the form came from.

Q. Did you at all consider the subject of the form in which the bonds ought to be drawn?

A. No, sir; that was more than we were lawyers for.

Q. You left that matter to Mr. Agnew, the clerk?

A. That is my recollection. It was left with him to proceed to St. Louis and have the bonds lithographed. Afterward there was some change made in the bonds, and other parties furnished the bonds.

Q. Was it the purpose of the court to indicate by the bond that they were not proceeding in pursuance of this vote?

Defendant's counsel objected to the question.

By the COURT: You signed the bond as it was?

A. Yes, sir.

Q. Did you notice the recitals in the bond?

A. Yes, sir.

Q. You signed it knowing the recitals were there?

A. Yes, sir.

By Mr. SKINKER:

Q. Did you consider its meaning at the time?

Defendant's counsel objects to the question. Objection sustained.

Q. Was the recital in here a mistake or not?

A. I do not know as I can hardly answer that.

By the COURT:

Q. Had you in your mind the two acts of the legislature—one under which you could only assess one-twentieth of one per cent., and the other under which you could assess taxes without limit?

62

A. My impression is just in this way: That we were acting under the general law, under the vote, and the railroad company was authorized under a special statute, and if there was a mistake or ambiguity in the bond our attorney failed to see it and show it to us and we were not lawyers enough to detect it ourselves.

Q. You were aware of the existence of the two statutes?

Ans. Yes, sir.

Q. And you were aware that you had the right to subscribe without any vote?

A. Yes, sir.

Q. If you did subscribe independently of the vote of the people the taxation would be limited to the twentieth of one per cent.? You were aware of that at the time?

A. Yes, sir.

Q. You took the vote of the people, and when you came to sub

scribe, if you did subscribe, then the people would be subject to tax beyond the limit of one-twentieth of one per cent.?

A. It was under the general statute that I supposed we were acting at the time—that is, for the first $100,000.

By Mr. SKINKER:

Q. You knew if you proceeded under the general statute that you could levy a tax sufficient to pay the whole of it?

A. We supposed we could.

Q. Had you read the law in the statute books?

A. We had our attorney's opinion and proceeded under his advice.

63 Q. And, on the other hand, did you or not understand if you proceeded under the charter you were limited in the power of taxation?

By Mr. REYNOLDS:

Q. Did you understand you were limited at the time you made the subscription?

A. The second subscription?

Q. The first subscription.

A. We did not make the first subscription under the charter act.

Q. Did you understand at the time of the first subscription that you were limited to one-twentieth of one per cent. if you proceeded under the charter?

A. We knew what the charter said.

Q. That is not my question. Did you know that you were limited to a tax of one-twentieth of one per cent. if you made the subscription under the charter, when you made the first subscription?

A. Yes, sir; we knew what was in the charter.

By Mr. SKINKER:

Q. At the time the transaction took place was there any other railroad in the county?

A. No, sir.

Q. Was there any other company proposing to build a road in the county?

A. There was some talk of building a road from West Quincy. I do not recollect that there was any organization to build the road.

Q. Was there at that time talk about building the M. & M. road, at the time of the first subscription?

A. Yes, sir; it was known the charter was in force. It
64 was not known at which point the railroad would come from. The vote was taken to induce some railroad to build through the county.

Q. Was it known that the company was organizing for the purpose of building through the county?

A. I don't recollect that it was known at the time the election was held.

Q. You have spoken of one of those bonds. You had examined them all, I believe?

A. I did, a few days ago; the bonds filed in the office.

Q. I understand you to mean that what you say applies to all of them.

A. What I examined, I think, were genuine. I cannot swear positively to my handwriting or anybody else's, being a farmer and going back and forward to court.

Defendant's counsel admits that there is no question as to the genuineness of the bonds.

Cross-examination by Mr. REYNOLDS:

I live in Van Buren county, Iowa, and have lived there since the fall of 1870. I was county judge of Knox county from some time in 1864 until October, 1870. I was elected, I think, — 1874, and in 1866 I was throwed out by ordinance. I believe I was sworn in three times altogether. The records will show whether I was holding under an election in 1866. I was elected, as near as I can recollect, about 1864 and 1866. My commission here will show when I was elected. I believe I was elected in 1866 for a term of six years. When I left Knox county my term of office had not expired, and I resigned because I had traded farms with a man in Iowa. I
65 believe I had disposed of all my property in Knox county then. I was not compelled to leave Knox county.

Q. Were you not threatened?

A. No, sir; not personally, that I ever knew of.

Q. Were you not threatened on account of this very subscription that you made, and didn't you leave in consequence of it?

A. No, sir; not at all.

Q. There was a great deal of excitement among the people after they found the court had made this subscription?

A. There was a great deal of talk, but not excitement.

Q. Do you remember of an order made while you were there for $100,000 of bonds, and then for $30,000, and then for $55,000?

A. I believe that is the order they were made in.

Q. Were those all the orders made for bonds while you were in the county and a member of the county court?

A. No, sir; I believe not. I believe there was an order made for the construction of the road from Edina northeast, but they were not issued while I was in office, that I recollect of. My recollection now is that it was $100,000 for that purpose.

Q. Was not that order of $100,000 of bonds made to the same road?

A. The M. & M.?

Q. Yes.

A. I believe it was.

Q. Was not that the second order that was made?

A. That I could not tell you now. My recollection is that they were in the order you said a bit ago.

66 Q. You recollect the fact that there was a second order for the subscription of $100,000 of bonds to the M. & M.?

A. For the northeast end of it.

Q. Did you have a vote of the people on that?

A. No, sir.

Q. How long after the first order was the second subscription of $100,000 made?

A. I can't tell you now. I think the records show that.

Q. Was the charter of this road discussed or brought to the notice of the county court when it was first suggested to take a vote of the people?

A. I can't remember.

Q. Don't you know that it was?

A. No, sir; I don't know positively that it was.

Q. When you came to make the order for the subscription of May 13, 1867, was not the charter of the M. & M. road discussed?

A. It might have been. I can't say positively.

Q. Will you say it was not?

A. No, sir; I will not say either way positively.

Q. Who was the circuit judge of your circuit at that time?

A. I cannot tell you positively whether it was Judge Wilson or not. I do not know that it was Judge Wilson or not. I do not know that it was Judge Wilson. I know Judge Wilson, and see him sitting here now.

Q. Didn't you have frequent conversations, as member of the county court, with Judge Wilson, your circuit judge, before the subscription was made by the county court, in regard to it?

A. I cannot state now.

Q. Will you say that you did not?

A. I have talked with him and other citizens in regard to railroad matters. It was general talk.

67 Q. Do you not remember that at that time the subscription order was made on May 13th there was quite an assembly of leading citizens present in the county court in regard to that matter?

A. I cannot state positively how many there were; there were some.

Q. Was not the matter discussed as to the advisability of making the subscription?

A. I cannot tell you what the discussion was.

Q. Was it discussed?

A. It might have been, but I will not say positively.

Q. Do you undertake to say that you put your county $100,000 in debt without any discussion?

A. No, sir; I do not. I do not recollect what the discussion was.

Q. I ask you whether there was not a big discussion about the matter, on the day of the subscription, before the county court.

A. It was discussed, but I cannot tell you the individuals.

Q. Was not the charter of that company distinctly before you? Didn't you know what the charter was?

A. Yes, sir; we knew what the charter was.

Q. Was not General Jones, from Macon City, there representing the railroad company?

A. I don't recollect.

Q. Was Col. Gilstrop there representing the railroad company?

A. He was at different times, but I don't know whether he was there that particular day.

Q. Was it not in pursuance of an understanding between your county court and the representatives of the railroad com-
68 pany that the form of bond adopted was adopted?

A. I do not recollect the form of the bond.

Q. Did not the representative of the railroad company present, Col. Gilstrop, draw up form of bond adopted by the county court for its approval?

A. As I said before, I never saw that form, that I recollect of now, until after it was lithographed.

Q. Do you undertake to say that the form of that draft was not submitted to the county court or the representative of the county court, its attorney, before it was lithographed?

A. I don't recollect.

Q. Do you say it was not?

A. I say I don't recollect that it was.

Q. Don't you know that there was a form of bond brought up there, that was lithographed, that was submitted to the court by the representative of the railroad company, and which was not accepted and sent back to be corrected before the present bonds were signed and issued?

A. I don't recollect distinctly about it.

Q. Don't you remember the fact that those bonds were submitted—that the first draft of the bond was lithographed and submitted to the county court by the railroad which had obtained the subscription—the M. & M. road; was not accepted to all parties, and the bonds you did sign were the result of negotiations between the railroad company and the county court?

A. The first bonds were payable at the treasury and the second were payable at the Bank of Commerce, in New York. Those two forms are all I recollect seeing.

Q. Payable at what treasury?

69 A. At the treasury of the county, or payable at the county-seat.

It is my recollection that the first bonds were payable at the treasury of the county.

Q. And that was the lithographed form?

A. It was printed in that form. I think it is what they call lithographed.

Q. It was printed after that still?

A. Yes, sir.

Q Instead of reading to be paid at the National Bank of Commerce, in New York, it read to be payable at the office of the county treasury, Edina, Knox county.

A. That is my recollection.

Q. That was submitted to the court?

A. The company requested a change to be made to the Bank of Commerce for convenience.

Q. Was not that the only change made or suggested to be made in these bonds?

A. I do not recollect of any other.

Q. Now, didn't you accept the bonds as the county court, at the representations of the railroad and railroad officers, with this change—changing them to the Bank of Commerce, in New York?

A. We accepted them as our attorney said.

Q. Did you not accept them as a county court?

A. We did, under his advice.

Q. Didn't you as a county court, on the representations of the railroad attorneys and railroad representatives that that was all the change that was desired, accept the form of bonds they gave you and make that change?

A. Just as I stated before.

70 Q. You do know that the attorneys of the railroad company and the president of the railroad company were the ones that submitted the bond to you?

A. Some of the bonds, if I recollect right.

Q. The first $50,000 of bonds that was issued out of the $100,000 subscription?

A. I forget the amount of the first lot.

Q. Did not the form that you adopted come to you from the railroad officers or attorney?

A. I don't recollect where the form came from.

Q. Was it not presented to you by them?

A. Not that I recollect. Judge Agnew fetched the bonds into the office.

Q. Which bonds?

A. The first issue of bonds lithographed here for us to issue. I suppose he fetched them from St. Louis. That is where he told us he got them.

Q. Is that all he told you?

A. I don't know what he told us.

Q. Who told you that the railroad was not satisfied with the treasury of Knox county being there instead of the Bank of Commerce?

A. I don't recollect who told that now. It was discussed and thought advisable to make the change.

Q. At whose solicitation?

A. The railroad directors, if I recollect right.

Q. Was it not the railroad directors and the railroad attorney and your court altogether that agreed on that form of bond before it was printed finally?

A. Not that I recollect.

Q. When the bond was agreed on and the treasury of

71 Knox county stricken out and the Bank of Commerce put in as the place of payment, was not that agreed on by the county court and the railroad representatives as the proper bond?

A. I don't know about the railroad representatives. We agreed to it. I believe that we were told that if we made the change it would be acceptable to the railroad company.

Q. Didn't you say the railroad company wanted the change made?
A. Probably they did.
Q. Didn't you say they did?
A. I think so.
Q. Don't you know what you said here a while ago?
A. It was through their representatives—their request.
Q. It was at their request the change was made?
A. Yes, sir; that is my recollection.
Q. Then it was agreed between you and them that the bond would be acceptable?
A. That is my recollection.
Q. Up to that time had you any discussion in your court as to the necessity of a vote of the people as a prerequisite to the issue of the bonds before the subscription?
A. It had been talked of—talked of all over the county and in court.
Q. When the question came up about the subscription to the particular road, as to whether under their charter a vote was requisite?
A. I cannot state directly.

72 Q. Do you undertake to say that it was not distinctly discussed before you and distinctly claimed by advocates of the bonds at that time that the county court had power to issue bonds to that road without a vote of the people?

Plaintiff's counsel objects to the question as immaterial and irrelevant. Objection overruled.

A. There was a discussion in regard to it that we could, under the railroad charter, issue without a vote of the people.
Q. And that discussion took place before the bonds were issued?
A. Not that I recollect now.
Q. It all took place after the bonds were issued?
A. After we commenced.
Q. After the first $100,000 were subscribed?
A. As I recollect.
Q. The first you heard that there was a clause in the charter of the M. & M. road that allowed you to subscribe without a vote of the people came to you after the vote and after the first bonds were issued. Is that the way you say?

Plaintiff's counsel objects to the question as immaterial and irrelevant. Objection overruled.

A. I can't recollect how, in order, these things happened. If I would be allowed a little personal explanation, I would state that I had removed from the county and been in another county, and those dates and the order in which they come I can't distinctly recollect. I have a very poor memory to run against a record, and I only wish to state what was my understanding at the time—that is, as far as I can recollect.

73 Q. You do not know what time you had that understanding?

A. I don't recollect distinctly the times and courts that the things happened—the dates, and individuals that were at court.

Q. All you have been testifying about, conversations and understandings that you have had, might have occurred after the issuing of the bonds, for anything you remember?

A. I remember a few of the general things that happened at the time, and that is all.

Q. You testified to a discussion between yourself and the county clerk, Judge Agnew, and the county attorney as to the rate of taxation on the respective bonds.

A. We had a conversation.

Q. Will you undertake to say when the conversation occurred with respect to the issue and signing the first $100,000 bonds?

A. I can't locate the time.

Q. It may have occurred long after that?

A. It probably occurred——

Q. Not probabilities. I want your recollection.

A. This matter ran three or four years, and it is a confused mass with me. With a week or two in the clerk's office with the records, I could probably give it a good deal more accurately.

Q. The first tax you levied to pay the interest on the bonds was levied on the 16th day of May, 1867, which was three days after the vote for the issue of the bonds took place. Might not the conversation have occurred with reference to the levy of the tax?

A. I think not; I think it was afterwards.

Q. You knew at the time you had the conversation that the bonds recited they were issued under the M. and M. charter?

A. I can give you no definite dates positive.

74 Q. Did you know at the time you had the conversation which you are talking about that these bonds had been issued under the M. & M. charter?

A. Not that I recollect of now.

Q. Had the bonds been issued then?

A. That I could not state distinctly.

Q. Was not the substance of the conversation between you and the attorney that, notwithstanding the recital that the bonds were issued under the M. & M. charter, you had a right to levy for all the interest on all the taxable property?

A. My recollection is that the conversation happened when they found that $100,000 would not grade and tie and bridge that line—some time before it was necessary to make an additional subscription.

Q. That was long after the first subscription had been issued and in part exhausted?

A. It must have been.

Q. How could you tell it was not enough to finish the grading and tieing?

A. That is my recollection now. It must have been.

Q. This conversation, I understand you, about the difference in

rate of taxation under the two charters or two laws occurred long after the bonds or some time after it?

A. I think it was.

Q. Will you please distinctly state to me whether it was not distinctly argued that although the charter of the M. & M. railroad authorized you to make the subscription without the vote of the people, yet, as a public officer, it was better for you to take the sense of the people before you acted on it. Did not Judge Wil-

75 son make that argument to you?

A. I don't recollect now.

Q. Will you say it was not made?

A. I will not say it was not made. I say I do not recollect.

Q. Will you undertake to say that the vote was not taken for the information and backing up of the court, to enable them to act under the M. & M. charter?

A. Not that I recollect of.

Q. Will you say that was not the case?

A. I have no recollection of that point.

Q. And that was not presented to the county court?

A. What?

Q. That view of the case that although you were authorized to issue the bonds without a vote of the people, yet, as a matter of policy, you had better take a vote on it.

A. I am sorry that I cannot answer you positively.

Q. I am very sorry.

A. I would be glad to do so if I could.

Q. Will you say that was not the case?

A. I have not the recollection to answer either way.

Q. You will not say it was or was not?

A. I will not say it was or was not.

Q. You have talked a good deal with Mr. Skinker about the case since you have been here?

A. I have talked with him some and a little with Judge Carr.

Q. Did Judge Carr help your recollection any?

A. Nothing in particular.

Q. Did Mr. Skinker help it much?

76 —. Nothing in particular. I have examined the records all I could to refresh my memory as far as I could.

Q. Then, as an independent recollection on your part, have you any recollection of the transaction but a very vague one?

A. A rather vague recollection of the transaction.

Q. Have you any other than a vague recollection of the power that the county court was acting under at the time you made the subscription?

A. I cannot say that I have a perfect, distinct recollection.

Q. You have gone over all the books since you came here?

A. No, sir; only certain orders.

Q. Did you go over Book 3?

A. I did not notice the number; it was a book that Mr. Ennis brought down as the records of the court.

Q. Where did you find it?

A. In Mr. Skinker's office.
Q. I see on page 302 that your name, Plumer, is signed there.
A. Yes, sir.
Q. When did you sign it?
A. As soon as the record was made up, after the court adjourned.
Q. On this page?
A. I think that is my signature.
Q. Do you undertake to say that you put your signature there at that time?
A. I say that some time after the adjournment of the court, if I recollect right.

77 —. Didn't you put your signature to the record in this city?
A. No, sir; not at all.

Q. You have not signed up any records since you have been here?
A. No, sir.
Q. You are sure of that?
A. Yes, sir; I am positively sure of that.
Q. This signature, then, has been there all the time?
A. So far as I know.
Q. I understand that you signed all of the $100,000 of the first issue?
A. I must sign when I was justice.
Q. Did you read the bond over before you signed it?
A. We examined them and signed them on the estimates of the the engineer only.
Q. You signed them on what?
A. On sworn statements of the engineer, under an order of the court.
Q. You examined them and knew what was in them when you signed them?
A. I read them over; but, as I have said before, I was not lawyer enough to know whether it was exactly in the right form or not. I depended on the attorney for that.
Q. You relied on the attorney as to the recitals being in there correctly?
A. Yes, sir.
Q. If it was the way he wanted it signed, you signed it that way?

78 A. Yes; in part. I felt satisfied reasonably well with the form of the bond. Forms are something we were not very well calculated to get up.

Q. Do you undertake — positively, in view of the whole matter, that you distinctly recollect that the county court did not issue those bonds under the charter of the M. & M. road?
A. We did not suppose that we were doing that, if my recollection serves me right—that is, the first $100,000.
Q. That is what I am talking about. What do you mean about your recollection serving you right?
A. If I recollect distinctly.
Q. Do you recollect distinctly?

A. I do not recollect distinctly, only that we were trying to act under the vote voting $100,000 assistance to the road.

Q. You do not recollect whether you were acting under the vote or under the M. & M. charter?

A. We tried to act under the vote, to satisfy the vote of the people of the county; that is my recollection now.

Q. Do you mean to say that you did not have in mind the power you had, and were not acting under the power you had by virtue of the M. & M. charter?

A. I do not know as I understand you.

Q. Were you acting independently of any provision in the M. & M. charter in issuing the first $100,000 of bonds?

A. We were issuing them to the M. & M. under the vote of the people.

Q. Were you issuing them under the charter?

A. Not that I recollect of. We were issuing them under the vote.

By the COURT:

Q. Did you mean to do what you did when you signed the bond?

79 Ans. I supposed when I signed the bond that I was signing it to carry out the wishes of the people of the county.

Q. Did you know what you were doing when you signed the paper?

A. Yes, sir; we supposed we did. We didn't know whether we did, like all other farmers in legal matters.

By Mr. REYNOLDS:

Q. Did you read the matter over in the book you have there, on page 302, or was it read over to you before you signed it?

A. I can tell you when I look at it whether I read it before or not (referring to the book).

Q. Have you read the record on page 302—the order making the subscription for $100,000?

A. Yes, sir.

Q. Didn't you read it over carefully at the time?

A. It was read over in open court and consented to and signed.

Q. You deliberately signed it?

A. Yes, sir; I signed it. I am very certain that is my signature.

Q. You are certain that you know what was in the order exactly when you signed the record?

A. Yes, sir.

Q. You knew the contents and understood it?

A. In a general way.

Q. How does it happen if you were acting wholly by virtue of the vote of the people that you did not say something in the order about that you were acting under the vote of the people?

A. The clerk was an old clerk, who had been clerk for

80 years and been a county judge himself, and we depended on him to make the record himself. We relied on him and we

never saw that there was anything in there until the question came up here.

Q. Can you turn to the order made for the second $100,000?

A. No; I don't know the page of the order.

Q. You understand plain English, don't you?

A. I would like to understand it.

Q. Don't you?

A. Tolerably.

Q. Didn't you understand exactly what the order said?

A. We thought it was sufficient.

Q. Don't you know that there was no reference to the vote of the people?

A. I know it now.

Q. Didn't you know it before?

A. I know now there was no reference to the vote of the people.

Q. Did the clerk read it in open court?

A. Yes, sir; I think he did.

Q. Didn't you understand it?

A. We thought it sufficient.

Q. Didn't you understand it?

A. I understood that order that it would answer the purpose.

Q. Didn't you know that that order under which the bonds were issued of May 13th, 1867, had no reference whatever to the vote of the people being taken?

A. I could not tell you the wording of the order now, only just what I have read, and I see it does not refer to the vote of the people.

Q. Didn't you know all the time?

A. I didn't know it till I read it over. I didn't recollect
81 it since that time.

Q. Didn't you know at that time that it had no reference to the vote of the people?

A. I didn't recollect it till I saw it.

Q. Didn't you know at that time that it had no reference to the vote of the people?

A. I didn't think it was necessary.

Q. Did you misunderstand it?

A. I thought it was right the way the clerk wrote it.

Q. Didn't you know how the order was written the time you made the second subscription and every subscription as county justice; that they were all entered the same way?

A. Not quite the same way. The clerk used the same form.

Q. And there was no reference to the vote of the people in any of them, was there?

A. I think not in any that I have looked over since I have been here.

Q. And no reference to the charter of the railroad in any of them?

A. No; I think not.

Q. Just the same form as this, with some change as to terms?

A. We looked to the terms and all that we thought was necessary.

Q. You knew there was nothing in there but what was there?

A. We put in what we thought was necessary, but it appears we did — put enough in.

Q. There was no misunderstanding about the order at the time?

A. Not that I recollect about it.

Q. You were not confused about it?

A. Not that I recollect. The clerk wrote it that way, and, being farmers, we were rather neglectful about having it written in
82 full.

Q. You thought the same thing when you signed the bonds?

A. We acted on our legal advice.

Q. Without any particular reference to anything but that was the way it was to be done?

A. We looked it over and done the best we could, according to the best of my best knowledge, which was not great.

Q. Nobody concealed anything from you?

A. Not that I know of.

Q. You were an active partisan in favor of the railroad?

A. I was in favor of the railroad.

Q. You were active and were in favor of the subscription being made?

A. I was a railroad man, as it was called.

Q. Were you not one of the directors of the railroad company?

A. I was named as director in the charter, but never served in the company. When a meeting of the board was held at the court-house, in Edina, I asked to be relieved, because I was a member of the county court and did not wish to act in the board in issuing bonds for the county to a railroad company that I — a director in.

Q. Were you relieved?

A. Yes, sir.

Q. Did you never serve with them any more?

A. Only as agent of the county, when the court sent me to Macon City or to meet the board as agent when there was an election of directors. Sometimes I went and sometimes others went.
83

Q. Who sent you?

A. Knox county court.

Redirect examination by Mr. SKINKER:

Q. When you were sent down to Macon to vote the stock at the stockholders' meeting?

A. Yes, sir. Sometimes Judge Wamsley went and sometimes myself.

Q. You never acted as director?

A. No, sir.

Q. And never had any stock in the company?

A. No, sir; no interest, only to get the road built through the county for the good of the county.

Q. You were asked whether there was not some excitement in the

county about the subscription. Was there any excitement in regard to the first $100,000?

A. None that I recollect now.

Q. You have been asked as to the form of the bonds and you have stated, as I understand, that the form was changed this far: That instead of being made payable at the county treasury they were made payable at the Bank of Commerce, in New York?

A. Yes, sir; that is my recollection.

Q. I will ask you if any other part of the bonds was discussed at that time, according to your recollection, except the place of payment.

A. That is all I recollect of at present; that I can think of now.

Q. In issuing the bonds, to what parts of the bonds did you pay attention? Did you consider anything further than the amount the bond called for and the rate of interest and the time of payment of the bonds.

84 A. I paid attention to them, as nigh as I can recollect, as to the issuing of a note individually.

Q. You were — particular as to the amount of the bonds as of a note, and the rate of interest and the time of payment?

A. Yes, sir; we were anxious to do the best we could for the benefit of the county.

Q. And further than that you did not pay special attention?

A. As to the special form, I was not lawyer enough to understand whether it was exactly right or not.

Q. You have also been asked about the form of the order here. Were you advised that it was necessary, in drawing up the order, to say something about the power of law under which you were proceeding? Did you have any advice on that point?

A. I do not recollect now what the discussion or advice was. As I said before, we were depending on the clerk, that we considered almost infallible, and that is where the difficulty came in.

Q. In respect to the orders of the court generally, who drew them up?

A. The clerk.

Q. Did the judges of the court ever undertake to draw them up?

A. No, sir; no more than to tell the clerk what we wished.

Q. The substance of what you wished in the order?

A. Yes, sir.

By Mr. REYNOLDS:

Q. I understand you to say that Col. Agnew drew all the orders and submitted them to the court or read them to the court?

A. He wrote up the record—that is, the clerk wrote up the record.

85 Q. Whom do you mean by the clerk?

A. The clerk of the county court.

Q. What was his name?

A. Agnew.

Q. Do you undertake to say that all orders were drawn up by Mr. Agnew—the order of May 13th, 1867?

A. The acting clerk at the time drew up the orders.

Q. This particular order of the 13th of May, 1867—did Mr. Agnew draw it up?

A. I think he did.

Q. I want you to be positive.

A. I won't be positive.

Q. You know his handwriting, don't you?

A. In a general way, I do. That looks very much like his handwriting.

Q. Do you undertake to say that he prepared the order—the draft of it?

A. So far as I know.

Q. Because you relied on him as being the proper man to draw it, and then you adopted it as the action of the court?

A. Yes, sir; we relied on him to write up the order.

Q. There is the original order itself (handing paper to witness). Whose handwriting is that?

A. I am not an expert in handwriting. I might make a little explanation in this way: that, like all other boards, we sat down around a table and the clerk kept a journal and afterwards made the record.

Q. I understand you to say that the reason you signed it was the confidence you had in Judge Agnew?

A. He read it and I thought it was right.

Q. I thought you said you relied on him?

86 A. I thought it was right and I signed it.

Q. Do you undertake to say that is Judge Agnew's writing (referring to the paper previously shown witness)?

A. No, sir; I do not think that is.

Q. Is that the original of that order?

A. It may be; I do not know that paper.

The plaintiff next read in evidence the testimony of Abner L. Gilstrap as reported in the case of The United States *ex rel.* George W. Harshman *vs.* The County Court of Knox County, &c., which is in words and figures as follows:

Testimony of A. L. Gilstrap.

Relator next called ABNER L. GILSTRAP, who, being duly sworn, testified that on and prior to the 13th day of May, 1867, he was president of the Missouri and Mississippi R. R. Co.; that at that time said company was contemplating and endeavoring to secure the construction of a line of railroad from Macon City, in Macon county, Missouri, through Edina, in Knox county, to Alexandria, in Clark county. Witness then produced and identified the journal of the proceedings of the board of directors of said company and read from said journal a resolution of said board, adopted at a meeting held on the 13th day of May, 1867, at the said town o Edina, accepting the subscription to the capital stock of said company that day made by said county court, and also read a resolu-

tion of said board appointing himself and two others a committee to draw up forms of certificates of stock and other instruments to be used by said company, including bonds to be issued by counties to the said company. Witness testified that in compliance with said resolution he drew up a form for such bonds; that in the
87 county of Macon, where he himself resided, a subscription, payable in bonds, had already been made by the county court of said county without taking a vote of the people; that he drew up a form applicable to that case; that he sent this form to all the counties which were subscribing to his company, including Knox, and that the bonds before the court in this case are in the form drawn by him.

A bond of the county of Macon being produced in evidence was found to be, *mutatis mutandis*, the same form as those of Knox—they both bore the stamp of the same lithographer, "A. Gast & Co., St. Louis," and the position of the words and other marks on the bonds indicated that they were both printed on the same stone. Witness was of opinion at the time this subscription was made that the county court had power to subscribe under the charter without a vote of the people.

88 *Testimony of Griffin Frost.*

GRIFFIN FROST testified: I am the editor and publisher of the Knox County Democrat and have been for 14 years. I was the editor and publisher of the paper when the statement of the bonded indebtedness of Knox county was published. Said statement was partially published in the number of the paper issued July 31st, 1879. It was continued in the number issued Aug. 7th and completed August 21st, 1879. The part of the statement relating to the issue of M. and M. bonds is contained in the first column of that part of said statement published in the paper issued July 31st, 1879.

This statement was brought to the office by Frank P. Hall, the county clerk, I think, for publication. I do not know what has become of the copy from which this statement was copied. I published said statements under a contract I had with the county court to publish the statement of the financial condition of Knox county. The court, on the 27th of August, 1879, authorized warrants to be drawn for the amount of my bill, $59.20, for publishing said statement.

The plaintiff then offered to read in evidence said statement of the bonded indebtedness of Knox county as published in the Knox County Democrat July 31st, 1879, which is in words and figures as follows, to wit:

EXHIBIT "A."

The Knox County Democrat.

Edina, Mo., Thursday, July 31, 1879.

Griffin Frost, editor and publisher. Vol. IX, No. 15.

Statement.

Bonded indebtedness of Knox county on account of the sub-
89 scription to the M. & M. R. R., with the amount of tax levied and collected and the receipts and expenditures from May 13th, 1867, to June 10th, 1879.

Under act of General Assembly approved February 29th, 1875, an election was held March 12th, 1867, upon the proposition to subscribe $100,000 to M. & M. R. R. Co., which resulted in 510 votes for and 98 against said subscription.

In pursuance of said election an order of the county court was made May 13th, 1867, subscribing to said R. R. company $100,000 in 7 per cent. 10-year bonds at par for work done in Knox county on the sworn estimate of the engineers of said road. Under special act of the legislature incorporating said road the county courts were authorized to make such subscription as they might deem advisable. Under this provision, on the 6th day of September, 1869, an additional subscription was made on the same terms as above for $30,000. On the same day an additional subscription was made by said court for $100,000 in 7 per cent. 20-year bonds at par, interest payable semi-annually, $50,000 when said road-bed is completed ready for the iron from Clark City, in Clark county, to Edina, and $50,000 when the cars are running on said road from said Clark City to Edina.

On the 2nd day of May, 1870, and order was entered of record authorizing the president justice of the county court to subscribe $55,000 additional to complete the grade, bridges, and tieing of the first division of said road, payable in 7 per cent. 10-year bonds at par for work in Knox county upon the engineer's estimate,
90 duly sworn to.

On the 20th day of December, 1870, 100 one-thousand-dollar bonds were issued, payable February 1st, 1891, with interest at 7 per cent., payable semi-annually, at the Bank of Commerce, city of New York, but no interest to run until delivered to the M. & M. R. R. Co. These bonds were delivered to P. B. Linville, trustee, by T. O. Wamsley, president justice, under order of county court, vol. 3, page 636. All of these bonds were afterwards delivered to the county court by P. B. Linville and were publicly destroyed.

Of the 1st subscription there was issued $112,500, of which there is now outstanding $100,000; of the 2nd subscription there was issued $19,100, of which there is now outstanding $14,300; of the 4th subscription there was issued $53,000, all of which is now outstanding, making a total of outstanding bonds $167,300, of which

which $6,600 is in outstanding warrants on the M. & M. R. R. fund which have been substituted for that amounts of bonds. Warrants have also been issued on said bonds for $1,094.35, being for interest on bonds thus cancelled. Warrants were also issued March 15th, 1879, in favor of G. W. Harshman, on the county revenue or general expenditure fund, aggregating $10,136.74, in payment of judgments obtained in the United States circuit court for accrued interest on the M. & M. R. R. bonds.

The present condition of the indebtedness of county on account of subscription to the M. & M. R. R. is as follows:

Total subscription		184,600 00
Total amount of bonds paid		17,300 00
	Bonds outstanding (unpaid)	160,700 00
91	Warrants unpaid substituted for bonds	6,600 00
	Unpaid coupons outstanding	49,863 26
Warrants unpaid substituted for coupons		11,231 09
	Total outstanding indebtedness	228,394 35

The above statement does not include interest on overdue bonds and coupons nor interest on warrants outstanding; which interest, if added to the above, would increase the total indebtedness to $230,000.

Summary.

Tax levied on account of M. & M. R. R. from the year 1867 to 1878, inclusive.

G. W. Fulton,	collector,	tax book,	1867		10,315 52
Same,	"	"	"	1868	8,423 34
H. R. Parsons,	"	"	"	1869	8,818 82
Same,	"	"	"	1870	10,441 65
Same,	"	"	"	1871	16,589 62
Same,	"	"	"	1872	16,890 71
H. McGonigle,	"	"	"	1873	8,151 42
Same,	"	"	"	1874	1,651 89
Same,	"	"	"	1875	1,761 93
Same,	"	"	"	1876	1,917 45
Same,	"	"	"	1877	1,871 27
Same,	"	"	"	1878	1,813 46
Total tax levied					88,647 08

92

Summary.

Tax collected on account of M. & M. R. R. fund from the year 1867 to 1878, inclusive, less commissions.

G. W. Fulton,	collector,	1867	6,498 51
Same,	"	1868	8,996 08

H. R. Parsons, collector, 1869			8,487 20
Same, " 1870			9,086 29
Same, " 1871			14,502 00
Same, " 1872			15,821 68
H. McGunigle, " 1873			8,006 01
Same, " 1874			1,948 94
Same, " 1875			1,576 01
Same, " 1876			1,778 14
Same, " 1877			1,781 47
Same, " 1878			1,695 31
J. Winterbottom, " 1878			76 89
Total collections, less commissions			80,254 53
G. W. Fulton's commissions	1,132 32		
H. R. Parson's "	2,390 78		
H. McGunigle's "	397 27		
John Winterbottom's commissions	3 20		
Total commissions			3,923 57
Total tax collected, including commissions			84,178 10
Receipts—Fulton, Reid & Wirt			262 26
Erroneous assessments			627 06
Delinquent, uncollected			3,579 66
Total tax levied			88,647 08

Summary.

Amount due M. & M. R. R. fund from Geo. W. Fulton, collector	15,494 59
Amount paid to treasurer	12,494 59
Amount paid to J. A. Agnew by order of court	3,000 00
93	15,494 59
Amount due fund from H. R. Parsons, collector	47,897 17
Amount paid to treasurer	48,297 17
Overpaid, April 3rd, 1871	400 00
Am't due from Henry McGunigle, collector	16,785 88
Amount paid treasurer	16,785 88
Amount due from John Winterbottom, collector	76 89
Amount paid treasurer	76 89
Total due from collectors	80,254 53
Treasurer's receipts from collectors	77,654 53
Clerk's receipt from Fulton	3,000 00
Receipts from interest deposits and loans	129 27
Receipts from other sources	8,204 80
Total receipts	88,988 60

Continuation of Summary.

Paid on bonds and coupons by treas.		27,353 96
" " " by J. A. Agnew, cl'k		8,470 89
Paid on bonds and coupons by Plummer		1,200 00
Paid on bonds and coupons by J. B. Poage		304 50
Paid on bonds and coupons by E. Rinehart, cl'k		30,221 00
Returned to treasury by J. C. Agnew		125 00
" " " J. B. Poage		190 50
" " " E. Rinehart		2,160 00
Paid on judgments, interest and costs		7,956 33
Paid on exchange		27 30
Clerk's fees & costs		1,262 88
94 P. B. Linville, custody of bonds		300 00
To reimburse county revenue fund		900 00
Transferred to county revenue fund		4,400 00
Bridges built, Fink and Parsons		325 00
Interest on due bill of county		24 38
Lawyers' fees and expenses		778 00
To pay loan from swamp-land fund		473 14
Loan to G. W. Fulton		1,500 00
Note		24 39
U. S. marshall on execution		342 00
Axel note		52 82
Balance on hand		596 51
		88,988 60
Due this fund from county revenue fund		700 00
Due H. R. P. Parsons from this fund		400 00

Endorsed on back of Exhibit "A:"

"The foregoing statement was certified to be a true exhibit of the debt & finances of Knox county, Missouri, by Frank P. Hall, then clerk of the county court of said county."

The defendant objected to the reading of said statement in evidence for the following reasons:

1st. Because said statement was not made out by the county court of Knox county, as required by the statutes of the State of Missouri in such cases made and provided.

2. Because there is no record of said statement either among the proceedings of the county court of Knox county as kept in
95 the book containing the record of its proceedings, nor is their any statement on file in the office of the clerk of the court from which the statement in question is copied.

3. Because the clerk of said county court had no authority from said county court to make said statement, and there is no law authorizing him to make it on his motion.

4. Because the clerk cannot by his statement, made twelve years after the contract, which resulted in making the subscription and issuing the bonds in question, create a liability on the defendant

other or greater than the liability created by the contract itself when it was made.

5. Because the defendant is not and cannot be bound by the unauthorized *ex parte* statement of the clerk contained in the statement in question, and said statement is irrelevant and incompetent to prove the issues on the part of the plaintiff in this case.

6. Because said statement is contradictory to the order of the county court making the subscription under which the bonds sued on were issued, and it is also contradictory to the recital in said bonds.

The court overruled said objection and allowed said statement to be read in evidence. To this ruling of the court the defendant then and there duly excepted.

Plaintiff then offered to read in evidence an order of the county court of Knox county, Missouri, made on the 27th day of August, 1879, allowing the account of Griffin Frost for publishing the statement of county finances aforesaid, which — in words and figures as follows:

96 *Order of C't Allowing Frost's Account, Allowed by Co. Court.*

STATE OF MISSOURI, } ss:
County of Knox, }

August Term, 1879.

In the county court of said county, on the 27th day of August, 1879, the following, among other, proceedings were had, viz:

Ordered by the court that the account of Griffin Frost be allowed in sum — $59.20 for printing for Knox county. Warrant ordered on contingent fund.

STATE OF MISSOURI, } ss:
County of Knox, }

I, F. M. Miller, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, this the 2nd day of March, 1888.

F. M. MILLER,
Clerk County Court.

STATE OF MISSOURI, } ss:
County of Knox, }

February Term, 1880.

In the county court of said county, on the 10th day of February, 1880, the following, among other, proceedings were had, viz:

97 Ordered by the court that the financial exhibit of Knox county be published in Edina Sentinel and Knox County Democrat, and that the same be paid for at rate of 40c. per square.

STATE OF MISSOURI, } ss:
County of Knox, }

I, F. M. Miller, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, this 2nd day of March, 1888.

F. M. MILLER,
Clerk County Court.

STATE OF MISSOURI, } ss:
County of Knox, }

May Term, 1880.

In the county court of said county, on the 30th day of June, 1880, the following, among other, proceedings were had, viz:

Ordered by the court that Griffin Frost be allowed *in* the sum of $85.75, printing for the county, and warrant issue on contingent fund.

98 STATE OF MISSOURI, } ss:
County of Knox, }

I, F. M. Miller, clerk of the county — in and for the said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, this 2nd day of March, 1888.

F. M. MILLER,
Clerk County Court.

The defendant objected to the reading of said order in evidence for the following reasons:

1. Because no order or action of the county court made twelve years after the order of the county court authorizing the subscription to be made can create an obligation on defendant other or different from the obligation created by the order authorizing the subscription to be made, and said order is irrelevant and incompetent to prove any issue in this case. The court overruled said objection and allowed said order to be read in evidence.

To this ruling of the court the defendant then and there duly excepted.

Plaintiff then offered to read in evidence the following statement

of the financial condition of Knox county (for 1880, not copied, as no copy was furnished clerk) (same as 1879).

99 " No copy furnished.

GEO. C. MOORE, *Clerk.*"

100 The defendant objected to the reading of said statement in evidence for the following reasons: Same reasons as those assigned to support the objection to the reading of the preceding statement of the financial condition of Knox county.

The court overruled said objections and allowed the said statement to be read in evidence. To this ruling of the court the defendant then and there duly excepted. The plaintiff then offered to read in evidence what purported to be a certified copy of the "bond register," kept on file as such in the office of the clerk of the county court of Knox county, Missouri, which is in words and figures as follows:

EXHIBIT B, OR BOND REGISTER.

Statement of Bonded Debt of Knox County, Mo., January 1st, 1874.

Date of issue.	No. bonds issued.	Denomination of bonds.	For what purpose issued.	Amount issued.	Amount outstanding.	When due.	Remarks.
1867-'8	33	500	Missouri & Mississippi R. R.	16,500	12,000	October 1st, 1877	$4,500. Retired.
1868-'9-'70	192	500	" " "	96,000	89,500	February 1st, 1878	6,500. "
1867-'8-'9-'70	100	50	" " "	5,000	2,750	October 1st, 1877	2,250. "
1868-'9-'70	282	50	" " "	14,100	11,850	February 1st, 1878	2,250. "
1870-'3	106	500	" " "	53,000	53,000	February 1st, 1880	
				184,600	169,100		County indebtedness.
1870	40	500	Quincy, Missouri & Pacific R. R.	20,000	20,000	December 1st, 1890	Issued by Jeddo township.
1872	100	500	" " " "	50,000	50,000	January 1st, 1872	Issued by Center township. Registered.
1872	10	500	" " " "	5,000	5,000	September 2nd, 1892	Issued by part of Lyon township. Registered.
				75,000	75,000		Total t'w'p indebtedness.
			Total issue	259,600	244,100		County & township indebtedness.

102 STATE OF MISSOURI, }
County of Knox. }

Personally appeared before the undersigned, a clerk — circuit court within and for the county —, who is known to me, and who upon his oath says that the foregoing statements are true and correct, as appears to him of record.

E. RINEHART,
Clerk of County Court.

Sworn to and subscribed before me, at office, in Edina, this 10th day of Feb., A. D. 1874.

[SEAL.] EDWARD M. RANDOLPH,
Circuit Clerk.

One hundred thousand dollars of the bonds issued to the Missouri and Mississippi R. R. Co. ordered by an election held 12th M'ch, 1867, official return being 510 votes for and 98 against, under an act of legislature of Missouri entitled "An act to incorporate the Missouri and Missouri Railroad Company," approved Feb'y 20th, 1865. All the bonds issued to the Missouri and Mississippi Railroad Company were issued under authority of this act. Bonds issued to the Quincy, Missouri and Pacific R. R. were issued under authority of an act to amend an act entitled An act to facilitate the construction of — railroad in the State of Missouri, approved M'ch 23rd, 1868, and authorized by a vote of more than two-thirds of the qualified voters of the township elections held as follows: Jeddo t'w'p, May 31st, 1870, 111 votes for, 39 against; Center t'w'p, Nov. 30th, 1869, 151 votes for, 58 against; subdiv. No. 2 t'w'p, Sept. 29th, 1871, more than $\frac{2}{3}$ of votes being for the issue.

Issued by—	Issued to—	Date.	Number.	Size.	Interest, rate.	Coupons—where payable.	Coupons—when payable.	Bonds mature—	Registered with the State auditor or not.
Jeddo township	Quincy, Missouri and Pacific R.R.	Dec. 1st, 1870	40	$500 each	8%	National Bank of Commerce, N. Y.	Semi-annual.	Dec. 1st, 1890	Not registered.
Center "	Same	Jan. 1st, 1872	100	$500 each	8%	Same	Same	Jan. 1st, 1892	Registered.
Sub-div. No. 2, School t'w'p No. 15.	Same	Sept. 2nd, 1872	10	$500 each	10%	Same	Same	Sept. 2nd, 1892	Registered.
Knox Co.	Missouri and Mississippi R. R.	Oct. 1st, 1867	33	$500 each	7%	Treasurer's office, Edina, Mo.	Annually	Oct. 1st, 1877	Not registered.
Same	Same	Feb'y 1st, 1868	192	$500 each	7%	National Bank of Commerce, N. Y.	Annually	Feb'y 1st, 1878	Not registered.
Same	Same	Oct. 1st, 1867	100	$50 each	7%	Treasurer's office, Edina, Mo.	Annually	Oct. 1st, 1877	Not registered.
Same	Same	Feb'y 1st, 1868	282	$50 each	7%	National Bank of Commerce, N. Y.	Annually	Feb'y 1st, 1878	Not registered.
Same	Same	Feb'y 1st, 1870	106	$500 each	7%	Same	Annually	Feb'y 1st, 1880	Not registered.

104&105 STATE OF MISSOURI, }
County of Knox. }

I, Samuel Ennis, clerk of the county court of Knox county, certify that the foregoing is a true statement of the matters set forth as the same appears upon the records of said court.

In testimony whereof I herewith set my hand and the seal of said court. Done at office, in Edina, March 17th, 1885.

SAMUEL ENNIS,
County Clerk.

STATE OF MISSOURI, }
County of Knox. }

I, F. M. Miller, clerk of the county court for said county, hereby certify the above to be a copy of a statement attached to the front part on blank leaf of Railroad Bond Record No. 1 of Knox county, Missouri, and kept in the county clerk's office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, Mo., this the 27th day of February, 1888.

F. M. MILLER,
Clerk County Court.

106 The defendant objected to the reading of said document for the following reasons:

1. Because said statement is only the unauthorized *ex parte* statement of the clerk, pasted on the fly-leaf of said bond register long after the bonds in question had been issu-d and recorded in said register, and it is not binding on the defendant, and it is irrelevant and incompetent to prove on the part of the plaintiff the issues in this case.

2. Because the clerk had no authority under the law or from the county court of Knox county to make the statement in question, and said statement is not binding on the defendant.

3. Because said statement is contradictory to the order of the county court making the subscription under which the bonds sued on were issued, and it is also contradictory to the recitals in said bonds.

4. Because the plaintiff cannot create a liability on the defendant by the unauthorized *ex parte* statement of the clerk of the county court, made years after the contract in question had been made.

The court overruled said objections and allowed the said copy of said statement to be read in evidence.

To this ruling of the court the defendant then and there duly excepted.

The plaintiff, by its counsel, next read in evidence sections 17 & 18 of the General Statutes of Missouri of 1866, chapter 63, to
107 wit:

Gen. Stat., Sec. 17 *&* 18, *Chap.* 63, 1866.

SECT. 17. It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town, to

take stock for such county, city or town in or loan the credit thereof to any railroad company duly organized under this or any other law of the State; provided, that two-thirds of the qualified voters of such county, city or town at a regular or special election to be held therein shall assent to such subscription.

SECT. 18. Upon the making of such subscription by any county court, city or town, as provided for in the previous section, such county, city or town shall thereupon become, like other subscribers to such stock, entitled to the privileges granted and subject to the liabilities imposed by this chapter or by the charter of the company in which such subscriptions shall be made; and in order to raise funds to pay the installments which may be called for from time to time by the board of directors of such railroad, it shall be the duty of the county court or city council, or trustees of such town, making such subscription, to issue their bonds, or levy a special tax upon all property made taxable by law, for county purposes, and upon the actual capital that all merchants and grocers and other business men may have invested in business in the county, city or town to pay such installments, to be kept apart from other funds and appropriated to no other purpose than the payment of such subscription; but the total amount of tax levied for railroad purposes
108 in any one year, in any county city or town, shall not exceed thirty per centum of the subscription made by such county, city or town.

(The foregoing sections copied in this record by clerk without orders.)

(GEO. C. MOORE, *Clerk.*)

109 *Agreement.*

It is agreed that any laws and statutes of the State of Missouri relating to this case may be read by either party without being copied into the record. It is also admitted that after the publication of the Macon county case, decided by the supreme court of Missouri and reported about October, 1867 (see 41 Mo., page 453), the county court of Knox county made and entered subsequent orders of court, under which additional bonds were issued without a vote, amounting in all to $84*0*000, and that the present outstanding bonds of Knox county amounted in all (including the $100,000 issued under the order of March 12th, 1867) to $167,300, as shown by records put in evidence.

The plaintiff rested here.

Defendants' Evidence.

The defendant, to maintain the issues on its part, read in evidence the deposition of Judge Sylvester Schultz, which is in words and figures as follows:

110 In the Circuit — of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri.

KNOX COUNTY, Complainant,
vs.
GEORGE W. HARSHMAN, Defendant.

Be it remembered that on the 17th day of December, 1887, before me, a commissioner appointed by the circuit court of the United States within and for the eastern division of the eastern judicial district of Missouri, at the office of John B. Henderson, Esq., No. 404 Market street, in the city of St. Louis, in said district, between the usual hours of business, came before me Sylvester Schultz, a witness on behalf of the complainant, to depose and testify in a civil cause depending in the said circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, wherein Knox County is complainant and George W. Harshman is defendant, whose testimony is alleged to be material and necessary in said civil cause in behalf of said complainant:

Dep. of S. Schultz.

And the said SYLVESTER SCHULTZ, of lawful age and sound mind, and having been by me first carefully examined, cautioned, and sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, did depose and say as follows:

111 *Deposition of Sylvester Schultz, a Witness Produced and Sworn as Aforesaid on Behalf of the Complainant.*

Present: James Carr, Esq., solicitor for complainant, and Thomas K. Kinker, Esq., solicitor for defendant.

Direct examination by Mr. CARR:

Q. Please state your name, age, residence, and occupation.

A. My name is Sylvester Schultz; age, fifty-seven; occupation, a farmer; residence, Knox county, Missouri.

Q. State how long you have resided in Knox county.

A. I have resided there since 1852.

Q. State whether you have ever held the position of county judge of Knox county. If so, state when and how long.

A. Yes, sir. I held the position from 1866 to 1869—four years.

Q. State the names of the other judges of Knox county during that time.

A. Judge Plummer and Judge Thomas O. Wamsley.

Q. Will you state if the county court at any time during the year 1867 made an order for a special election to be held to ascertain the sense of the qualified voters of Knox county in regard to subscribing to some railroad company whose railroad was to run through Knox county; and, if so, state when that order was made and the amount of the subscription.

Objected to as incompetent, because the county court record is the best evidence if there be such an order.

A. The order was made the 6th day of February, 1867. The amount of the subscription was one hundred thousand dollars.

Q. State the date when that election was to be held.

112 Objected to the same as before.

A. On Tuesday after the second Monday in March, 1867—the same year.

Q. Now state whether the county court at any time prior to the day fixed for that election modified that order or not.

Objected to the same as before.

A. Yes, sir; we did.

Q. State when the order modifying the original order was made, if you remember.

Objected to the same as before.

A. Well, on the 4th of March, the same year.

Q. State whether any notice of the modified order was ever published or not.

A. No, sir; there never was.

Q. State whether Knox county had a list of the qualified voters in the year 1867; and, if so, state whether that list is on file or not in the county clerk's office or in any other office in the county.

A. Well, we had a list at that time, but I have not seen it since, and the clerks there in the office told me, "It can't be found."

Objected to the answer as incompetent and hearsay.

Q. State whether you have inquired for that list or not any time recently.

A. Yes, sir; I did; week before last.

Objected to the question and answer on the ground that the witness is not the custodian of the list and is not a proper party to testify as to its whereabouts, and that the question is calculated to elicit incompetent testimony.

Q. State who was the custodian of the registration list referred to.

Objected to as a question of law.

A. When?

Q. In 1867, and since then if it was a public record.

Objected to as calling for the witness' opinion on a question of law.

A. The county clerk.

113 Q. Now, state whether you have inquired of the county clerk of Knox county lately for that registration list.

Objected to as irrelevant and incompetent.

A. Yes, sir.

Q. State what his answer was to your inquiry.

Objected to as irrelevant and incompetent, not tending to show the loss of the registration list or account for it.

A. It could not be found.

Q. State when was the last time you saw the registration list and where.

A. Well, I don't believe I ever saw it after the year 1867, and I don't know just where—I couldn't say.

Q. You knew there was such a list?

A. Yes, sir.

Q. In 1867?

A. Yes, sir.

Q. At the time that election was held?

A. Yes, sir; we had it there in the office at that time.

Q. State if you remember the number of qualified voters on that list, and, if so, state how many, at the time fixed for that election.

Objected to because it is not shown that there ever was any list made out according to law, and, further, it is immaterial what number of qualified voters there were in Knox county at that time.

A. I can't say what the exact number was, but I will say it exceeded one thousand.

Q. Now, state the number of qualified voters registered on that list in 1867, at the time fixed for that election.

Objected to upon the ground that the registration list is the best evidence of the number of qualified voters upon it, and its loss must be accounted for before any other evidence can be ad-
114 duced to show the number of qualified voters.

A. Well, I can safely say it exceeded one thousand, but what the exact number was I can't say.

Q. State whether an election was held at the time fixed in the order.

A. Yes, sir; it was.

Q. State the number of votes cast at that election.

A. The number of votes—let's see——

Mr. SKINKER: If you know of your own knowledge.

A. Well, there was five hundred and ten for and ninety-eight against.

Mr. CARR:

Q. The subscription?

A. Yes, sir; ninety-eight against the subscription and five hundred and ten for the subscription.

Q. Will you state, if you know, where Judge Plummer resides, and also what has become of Judge Wamsley?

A. Well, I don't know where he resides now—that is, Plummer; but the last I heard of him—that was in 1883—he was living in Iowa. He moved from Missouri to Iowa.

Q. In what year?

A. Well, I wouldn't say positively. It was in 1871 or 1872.
Q. Has he resided in Knox county since then?
A. No, sir.
Q. Now, the other judge.
A. He is dead.
Q. State when he died.
A. Well, I couldn't give the exact year, but he died between 1870 and 1875. Now, I couldn't say what year he died in. I might have studied up the time he died, but it would be some little trouble for me to do it.
Q. State who was the clerk at the time these orders were made and this election was held.
A. James C. Agnew.
Q. Will you state what has become of him, if you know?
A. He is dead.
Q. State when he died.
115 A. This is the first time my attention has been called to that—when he died. I don't think he died until I was out of office, but that I can't be positive about now, but I don't think he died until after I was out of office. That would bring it up to 1870.
Q. State how soon after the special election had been held that the county court held a session.

Objected to on the ground the evidence sought to be elicited is incompetent, and because the record of the county court is the best evidence.

A. In May following.
Q. State how many of the judges were present at that session of the county court.

Objected to for the same reason as before.

A. They were all there.
Q. State whether the judges discussed among themselves and considered the legality of that election.
A. Yes, sir; we did.
Q. Now state what the opinions of the judges were in regard to the legality of that election.

Objected to on the ground it is incompetent and irrelevant.

A. Well, we were a little mixed up at the start in discussing that matter, but none of us were really willing to subscribe that stock under that vote. I would like to go on a little further on that.

Objected to the answer upon the ground that it is irresponsive to the question.

Q. You didn't answer the first of that question whether you discussed and considered. First state whether you did that or not.
A. We discussed this matter and considered over it and held off; didn't take any action in the matter at all.

116 Q. Held off until when?

A. We held off until the board of directors of this M. & M. Railroad Company came up there.

Q. Up to where?

A. To Edina; and came before the court and requested us to take the stock under the charter, requesting us to ignore the election or vote of the people, and take it under the charter.

Q. State what day you convened in May.

Objected to as incompetent and irrelevant.

A. Well, we convened the 6th.

Q. State how long you continued in session until you made the order subscribing to the M. & M. Railroad Company.

Objected to the same as before.

A. Well, I don't know that we were in session all the time. We might have set three or four days and adjourned until the 13th; it might have been an agreement for us to meet the directors on that day, and did meet them on the 13th of May.

Objected to the answer on the ground it does not show that the witness is speaking from knowledge of the facts, but only from conjecture, and it is otherwise incompetent and irrelevant.

Q. Now, state what took place on the 13th day of May, 1867.

A. Well, the board of directors—that is, the railroad directors—met us on the 13th of May, and Col. Gilstrap was president of the road and he made a speech before the court.

Objected to the question and the answer as incompetent and irrelevant and as tending to contradict the record in the case of Harshman against Knox county.

Q. A. L. Gilstrap?

117 A. Yes, sir; asking us to ignore the vote and take the stock under the charter of the M. & M. Railroad Company.

Objected to the answer same as before, and also that the record of the county court is the best evidence of what then and there took place.

Q. State whether Col. Gilstrap gave you that opinion on that occasion or not.

A. Yes, sir; he did.

Objected to as leading.

Q. State what his opinion was in regard to subscribing in that case.

A. He gave it as his opinion that we could take stock, had a right to take stock, under that charter without a vote of the people.

Q. State where it was that he gave you that opinion.

Objected to the same as before.

A. In the court-room.

Q. State whether the court was in session or not at the time.

Objected to the same as before.

A. Yes, sir.

Q. Now, state whether any other person gave his opinion on that occasion as well as Col. Gilstrap; if so, state what the opinion was.

Objected to the same as before.

A. Gen. Jones was there, and he made a speech and gave it as his opinion.

Q. State what his opinion was.

A. Well, that we had the right to take stock under the charter—that is, we had a right to take stock without a vote of the people.

Q. Now, state whether Gen'l Jones had any connection with the M. & M. Railroad Company or not; and, if so, state what his connection was.

118 A. He was a director at that time.

Q. State where Col. Gilstrap and Gen. Jones resided at that time.

A. They both resided in Macon City, I believe. I am not sure of that, though.

Q. Missouri?

A. Yes, sir.

Q. State if they had any profession; and, if so, state what that profession was.

A. They were both lawyers.

Q. State what their reputation as lawyers was, if you know.

Objected to as incompetent, irrelevant, and immaterial.

A. They were considered among the best class of lawyers; they were considered good lawyers; among the best.

Q. State whether it was at the same session of the county court that Gen'l Jones gave his opinion that Col. Gilstrap had given his.

A. Yes, sir; all on the same day.

Q. In open court?

A. Yes, sir.

Q. State whether any other person present at that session of court gave his opinion in regard to the same matter.

Objected to the same as before, and irrelevant, incompetent, and immaterial.

A. Judge Wilson did so; he was at that time circuit judge.

Q. Where did Judge Wilson reside?

A. Edina, Knox county, Missouri.

Q. State what opinion Judge Wilson gave the county court upon that occasion.

Objected to as irrelevant, incompetent, & immaterial.

A. His opinion was we could take the stock under the vote or without the vote, and he stated that in his speech that same day that Gilstrap and Jones made the speech, and he stated that also time and again out of the court.

119 Q. State whether the county court was influenced in any way by the opinions given by Col. Gilstrap and Gen'l Jones; and, if so, state what it influenced the court to do.

Objected to as incompetent, irrelevant, & immaterial.

A. Well, their aim in coming there was to get that stock taken under this charter, and requested us to take it that way, and, by their request, it suited us very well to take it that way. We were just as willing to take it that way as any other.

Q. Now state whether you made any order authorizing a subscription to be made that day; and, if so, state how much you subscribed and under and by what authority you made that subscription.

Objected to as incompetent and immaterial, because the record is the best evidence.

A. Yes, sir; we made an order that day under the charter of the M. & M. Railroad Company.

Q. To subscribe how much?

A. One hundred thousand dollars.

Q. In making that subscription did you act under the special election held on the 12th of March or not?

Objected to upon the ground it is incompetent, irrelevant, and immaterial and as calling for the opinion of the witness.

A. No, sir.

Q. Was that subscription made by any other authority except the one you have stated, to wit, the charter of the M. & M. Railroad Company?

Objected to as incompetent, irrelevant, and immaterial.

A. No, sir.

120 Q. State whether you—meaning the judges of the county court—considered the legality of the special election held on the Tuesday after the second Monday in March; and, if so, state whether there were any objections to the legality of said election; and, if so, state what those objections were.

Objected to as irrelevant, incompetent, and immaterial.

A. It was a question with us whether it was legal.

Q. The question is whether you considered it. What is your answer to that, whether you considered it?

A. Just wait a little now. I really don't know whether we settled down amongst ourselves on that legality point, but yet we were not satisfied to act under it.

Q. State whether you considered it—talked it over.

A. Yes, sir; we talked it over; we considered it, thought over it, and talked over it.

Q. Now, go on and state in your own way the objections, if there were any.

A. Well, we had one thousand and upwards of qualified voters registered, and there were only five hundred and ten for it, and con-

sequently we didn't consider that we had a two-thirds majority in favor of the subscription, consequently it wouldn't be legal.

Q. That is one objection. Now, any other?

Objected to as leading.

A. There was another point there we couldn't exactly get over and that was, we didn't give the second notice when we made an amendment—that is, the order of amendment. We gave no notice at all. We hadn't time to give it. There was only eight days elapsed from the time we made the second order until the election was held. We just let it pass by.

121 Q. Now, was there anything else?

Objected to as irrelevant, incompetent, and immaterial.

A. Well, the railroad company objected to taking the stock under the vote of the people because they thought it wasn't legal.

Objected to the answer as irrelevant, incompetent, and immaterial.

WITNESS: That is the reason why they didn't want the stock taken in that way.

Objected to the answer the same as before.

Q. Do you remember of any other objection being made to the legality of that election?

A. Well, the vote, as it was taken, wasn't taken on any particular road; the stock wasn't ordered taken in any particular road at all.

Q. The vote, you mean?

A. I mean the vote.

Q. How many propositions were submitted at that special election to be voted on?

Objected to on the ground that the question calls for a matter of record and as incompetent, immaterial, and irrelevant.

A. Three.

Q. Do you remember what the three propositions were that were submitted to the people?

A. Yes, sir.

Q. Please state them.

A. Well, one was running from Keokuk, Iowa, to Alexandria, Missouri, to intersect with the North Missouri railroad near Macon City, and then one was from West Quincy to intersect some point on the North Missouri railroad, and then the other was any railroad company which might run a railroad through Knox county,

122 not giving—let me see—giving no starting point or no terminus; I don't know which, one or the other.

Q. I will read you the copy of the order as modified on March 4, 1867: "It is hereby ordered by the county court of Knox county that an election be held at the various election precincts in Knox county on the Tuesday after the second Monday of March, 1867, to ascertain the sense of the qualified voters in said county as to

whether or not they do authorize the county court of said Knox county to subscribe said amount of one hundred thousand dollars in any railroad company which may construct a railroad running from West Quincy, in this State, thence west through Knox county, and running through Edina, the county-seat of said Knox county, to some point on the Missouri river, or in a company which may construct a railroad running from Alexandria, in this State, southwest through Knox county and through Edina, the county-seat of said Knox county, thence west so as to intersect the North Missouri railroad at or near Macon City, or in any other railroad company which may duly organize under the laws of this State and which may construct a railroad running through Knox county and through Edina as aforesaid and connecting with the North Missouri railroad, or running through Knox county and through said Edina to Quincy, Illinois, or Macon City, Missouri, or to some point on the Mississippi or Missouri river, the stock to be taken to be subject to the conditions, which shall be payable in county bonds bearing seven per cent. interest and running ten years, and that all monies arising from the sale of said bonds shall be expended in the construction of a railroad within the county of Knox as afore-
123 said; and further ordered by the court that the ballots or tickets voted will be marked as follows, to wit: "Shall the county subscribe one hundred thousand dollars to the railroad?" "Yes." "Shall the county subscribe one hundred thousand dollars to the railroad?" "No." And further ordered by the court that so much of the former order made by this court February 6th, 1867, in relation to said subscription, and so forth, as conflicts with this order be, and the same is hereby, revoked. Is that the order to which you have referred as the one under which that special election was held on the Tuesday after the second Monday in March, 1867?

A. Yes, sir.

Objected to the question and answer as irrelevant, incompetent, and immaterial.

Q. Your third objection, then, to the legality of that election was as to the manner in which the three railroads were to be voted for, was it?

Objected to as leading and an unfair suggestion to the witness.

A. Yes, sir.

Q. You had three objections, then, to the legality of the special election held at the time stated, as I understand you?

Objected to as leading.

A. I can't say that we all agreed to all three of those objections; but those were set up as three objections, and I thought they were all good objections myself, and so did Wamsley, but Plummer didn't exactly agree with us, I don't believe, on all three.

Q. Now state which one of the three objections he did agree with you on.

Objected to as irrelevant, incompetent, and immaterial.

124 A. Well, on these three railroads. He thought that these didn't amount to anything, and there ought not to be any objection.

Q. Well, in regard to not giving any notice of the county court ordering the election, what was his opinion about that?

A. We all thought we ought to give notice.

Objected to the question and answer as incompetent, irrelevant, and immaterial.

Q. He agreed with you in that?

A. Yes, sir.

Q. Now, as to the other objection, namely, whether there were two-thirds of the qualified voters of Knox county that had voted in favor of making the subscription?

A. No, sir; they hadn't.

Q. Well, I am asking you about the opinion.

A. Oh, the opinion.

Objected to the question as irrelevant, incompetent, and immaterial.

A. We all agreed on that. We all agreed it was not legal.

Q. State what your opinion, as well as the opinion of Wamsley and Plummer, was in regard to how many votes should have been cast in favor of making the subscription in order to make it a two-thirds vote.

Objected to as irrelevant, incompetent, and immaterial.

A. Well, take one thousand as a basis; it would make it six hundred and sixty-six votes—six hundred and sixty-six and two-thirds.

Q. Now, was that the opinion of the other two as well as yourself?

A. Yes, sir.

Objected to the question and the answer as irrelevant, incompetent, and immaterial, and also as leading.

125 Q. State how you understand the law—that is, requiring the assent of two-thirds of the qualified voters of the county in order to authorize the county court to make a subscription to a railroad company.

Objected to as irrelevant, incompetent, & immaterial.

A. We understood that we should have two-thirds of all the legal voters of the county.

Q. Well, when you say legal voters of the county, do you mean those whose names were on the registration lists as the qualified voters?

Objected to as leading, horribly leading, irrelevant, immaterial, incompetent, horribly and outrageously leading.

A. Yes, sir.

Q. When you say, "We understood that we should have two-thirds of all the legal voters of the county," whom do you mean by "we"?

A. Objected to the question as irrelevant, immaterial, and incompetent.

A. I mean the county court.

Q. The other county judges as well as yourself?

A. Yes, sir.

Q. Under the form in which the proposition was submitted to the qualified voters as to whether the county should take stock, could you tell which one of the three railroads specified in the order was meant by the vote?

Objected to as incompetent, immaterial, and the order will show for itself whether or not the road for which the subscription was intended could be identified or not.

A. I could not.

Q. State, if you remember, the names of the directors of the M. & M. Railroad Company who were present in Edina on the day the subscription was made; and, if so, state their names.

126 A. Mr. Gilstrap, Jones, Thomas Moody—he was from Macon county. I do not know whether he has any other name or not—Fulton, Reed, and Col. Wirt.

Q. Anybody else from Knox county?

A. I don't remember of any others.

Q. Who was it from Clark?

A. Well, at that time I wasn't acquainted with any of the directors whatever in Clark. I couldn't say whether any of them were there or not, but there might have been.

Q. State whether there was a quorum of the board of directors present.

Objected to as irrelevant, incompetent, and immaterial, because the record of the board is the best evidence.

Ans. I think so.

Q. After the county court had made the order authorizing the subscription of one hundred — dollars to the capital stock of the M. & M. Railroad Company, state whether the board of directors took any action in regard to said order; and, if so, state what that action was, if you know.

Objected to as irrelevant, incompetent, and immaterial, because the minutes of the proceedings of the board of directors is the best evidence.

Q. Now, the first branch of the question is whether they took any action.

A. Well, that very day—I don't know positive about it, but they commenced from that very time to act in this matter and commenced operations from that day on. What they did that day I don't exactly know more than that.

Q. I will ask you to state whether the board of directors accepted the subscription as made.

127 Objected to as immaterial, incompetent, irrelevant, and as leading.

A. They accepted the subscription that term of court. Whether it was that day or not I couldn't say. They did that term of court.

Q. State whether the county court issued any bonds in payment of said subscription to the M. & M. Railroad Company; and, if so, how many or to what amount.

A. Yes, sir; they issued one hundred thousand dollars' worth of bonds.

Q. In payment of the subscription?

A. In payment of the subscription; yes, sir.

Q. State who prepared the form of the bond that was issued, if you know.

Objected to the question as irrelevant, immaterial, and incompetent.

A. Col. Gilstrap prepared that and brought it into court to know whether we would accept that form of bond.

Q. Well, state whether the court examined it and was satisfied.

Objected to the question as irrelevant, immaterial, and incompetent, and also leading; highly leading.

A. We examined that thoroughly. We also called our county attorney in to examine it, and also Judge Wilson, of Edina, and we considered it all right, no catch in it or anything of the kind, and we accepted that form as prepared by Col. Gilstrap.

Q. Was the form of the bond prepared by Col. Gilstrap satisfactory to the county court?

Objected to as irrelevant, incompetent, and immaterial and leading.

128 A. Yes, sir.

Q. Who was it you said examined the form of the bond as well as the county judges?

A. Our county attorney, Mr. Hillis, and also Judge Wilson.

Q. State whether Judge Wilson at that time held any official position; and, if so, state what it was.

A. Circuit judge for that district.

Q. State where he resided then.

A. At Edina.

Q. I believe you stated he approved the form of bond?

A. Yes, sir.

Q. So did your county attorney?

A. Yes, sir.

Q. Well, were the judges all satisfied with the form of the bond?

A. Yes, sir; we were all satisfied with it.

Objected to the question and the answer as irrelevant, incompetent, and immaterial and leading.

Q. The bonds as issued contained the following recital, to wit: "This bond being issued under and pursuant to the order of the county court of Knox county for subscription to the stock of the Missouri and Mississippi Railroad Company as authorized by an act of the General Assembly of the State of Missouri entitled 'An act to incorporate the Missouri and Mississippi Railroad Company,' approved February 20th, 1865." Does that recital express the fact as it was in regard to the authority under and by which the subscription of one hundred thousand dollars to the capital stock of the M. & M. Railroad Company was made?

Objected to as irrelevant, incompetent, immaterial and leading.

A. Yes, sir.

Q. After the county court had made the order referred to
129 authorizing the subscription of one hundred thousand dollars to the capital stock of the M. & M. Railroad Company state whether it took any action in regard to the payment of the interest on the bonds issued or to be issued; if so, state what action was taken.

A. Well, yes, sir; we did. We made an order of a levy of twenty-five cents on the dollar to pay the interest.

Q. On the hundred dollars?

A. Well, on the hundred dollars, I mean.

Q. For what purpose?

A. For the purpose of paying the interest on those bonds.

Q. How soon was that after the order for the subscription was made?

A. I believe it was the sixteenth of May.

Q. Well, state whether you did anything the next year—1868; if so, state what you did.

A. Well, in 1868 we made a levy of thirty cents on the hundred dollars.

Q. How was it in 1869?

A. The same thing.

Q. Were you on the bench after 1869?

A. No, sir.

Q. Have not been on the bench since?

A. No, sir.

Q. Now, state why it was that you made so large a levy as twenty-five cents for the year 1867 and thirty cents on the hundred dollars for the years 1868 and 1869.

Objected to as incompetent, irrelevant, and immaterial because the witness cannot explain the record made by himself and his associates.

A. We aimed to make a levy just sufficient to pay off all the interest that might become due.

Q. On the bonds?

A. On the bonds.

Q. State what your opinion was as to your right to make a levy for that amount.

A. Well, we thought we had the right and acted accordingly.

130 Q. That was they way you construed the charter authorizing the subscription to be made, was it?

Objected to as irrelevant, incompetent, and leading.

A. Yes, sir.

Q. When you speak of having made said subscription under and by authority of the charter of the M. & M. Railroad Company do you mean the special act of the General Assembly of Missouri entitled "An act to incorporate the Missouri & Mississippi Railroad Company," approved February 20th, 1865?

Objected to as leading and as putting into the mouth of the witness words that he has not uttered.

A. Yes, sir.

Q. Is that the act under which the M. & M. Railroad Company was organized?

Objected to as incompetent, immaterial, and irrelevant.

A. Yes, sir.

Q. State whether you expect to go away from the State of Missouri at any time; and, if so, when, and how long you expect to be gone, and state when you expect to go.

A. I left home two weeks ago Thursday last, on my way to California, and expect to be gone six months or nearly so.

Q. State what you still intend to do.

A. And I still intend to go, if possible.

Q. You expect to be absent how long?

A. Well, I can't tell exactly, but I want to give myself six months' time.

Q. Judge Schultz, please state whether the M. & M. Railroad Company has ever built a railroad into or through Knox county.

Objected to as irrelevant, immaterial, & incompetent.

A. No, sir; they never did. I don't expect they ever will.

131 Cross-examined by THOMAS K. KINKER, solicitor for defendant:

Q. Judge, are you a tax-payer of Knox county?

A. Yes, sir.

Q. And own property in the county subject to taxation?

A. Yes, sir.

Q. Real & personal?

A. Yes, sir.

Q. How do you know five hundred and ten votes were cast at this election in favor of subscription and ninety-eight votes were cast against it?

A. I know it by the record; that is all the way I do know it.

Q. If it were not for the record, you would not recollect the fact?

A. No, sir; I couldn't tell exactly—that is, the exact number.

Q. Now, do you know that you levied a tax of twenty-five cents

on the hundred dollars, in the year 1867, to pay the interest on these bonds?

A. Yes, sir.

Q. How do you know it?

A. Well, I know that by the record—that is, I know the amount by the record. I know we made a levy, but I couldn't state what the exact amount was.

Q. How do you know the fact that in the year 1868 you made a levy of thirty cents on the hundred dollars?

A. Well, the amount I have to get from the record.

Q. How do you know in the year 1869 you levied a tax of thirty cents on the hundred dollars?

A. I get that from the record, too; but before I examined the record I knew we had made a levy in each of those years, but the amount I couldn't get at until I went and examined the records.

Q. How do you know the railroad company was organized
132 under the act of 1865, chartering the M. & M. Railroad Company?

A. Well, a person might know it by various ways; one way was they told me so.

Q. Who told you so?

A. Why, the directors of the company.

Q. At what time?

A. Well, it was in the year 1867—some time between the 1st of January and May, 1867. It was the general talk.

Q. That is the way you knew that the Missouri and Mississippi Railroad Company was organized under the act of 1865, chartering the Missouri & Mississippi Railroad Company, is it?

A. Yes, sir.

Q. And that is the only way?

A. I didn't go and examine any of their papers. Of course, a man might have found out other ways.

Q. So that all you know about it is what was stated to you by others?

A. Judge Plummer was down at Macon City and claimed to know all about their organization. He was president of the board.

Q. That is your answer to the question, is it?

A. Yes, sir.

Q. Did you ever read the charter of the Missouri and Mississippi Railroad Company?

A. Yes, sir.

Q. The act of 1865?

A. Yes, sir.

Q. Did you observe the provisions of that charter?

A. Yes, sir.

Q. All its provisions?

A. I think so.

Q. Are you familiar with them now?

A. Why, I think I am pretty familiar with them.

Q. Were you at that time familiar with them?

A. I think I was.

Q. Now, as I understand, you said that Col. Gilstrap, Gen'l Jones, and Judge Wilson discussed the charter of the Missouri and Mississippi Railroad Company before the court?

A. Yes, sir.

133 Q. Did they explain to the court the provisions of that charter?

A. Yes, sir.

Q. All of its provisions?

A. I think they did.

Q. Did they discuss the bearing that the general railroad law might have upon the case that was before the court?

A. Yes, sir; I think they did.

Q. Now, can you state the points that those gentlemen did discuss before the court at that time, at or about the time that this subscription was made, in May, 1867?

A. Oh, I could not give their language. Those directors came there for a special purpose, and that was to get the court to subscribe this hundred thousand dollars of stock to that railroad under this charter. They came for that specific purpose.

Q. Now, I want to ask you the question whether you can state what points they discussed in pursuit of that object.

A. Well, the main points were we could ignore the vote that was taken and take the stock under that charter—the charter of the M. & M. Railroad Company.

Q. That is the point that was discussed?

A. That was the point.

Q. Now, were there any points subsidiary to that that they urged upon you to prove their position?

A. Well, I don't know but they did, but I couldn't say what it was, because that was the point that was under consideration and that was the point that I tried to remember.

Q. Tried to remember?

A. Yes, sir.

Q. What do you mean by that phrase?

A. Why, the point that we had authority to take stock under the charter of the M. & M. Railroad Company.

134 Q. When did you try to remember that point?

A. Well, we, as the county court, didn't think that that there election was legal, and we didn't know if we subscribed stock under that election whether it would hold good or not, and we were in a kind of dilemma about the matter at this time. No company had solicited us to take any stock in their company—neither this M. & M. Railroad Company—and they came there and solicited us—you must excuse me, I had a stroke of paralysis at one time and it kind of bothers me in my speech a little—they solicited us to take that stock under this charter, and that relieved us, and we were very glad of it. If they were willing to take stock under the charter we were willing to let them have it that way.

Q. Now, you stored up in your mind, then, at that time the fact that they proved to your satisfaction that you could disregard the

vote and subscribe under the charter? Do I understand that is the case?

A. Yes, sir.

Q. Why did you make a special note of that fact?

A. Well, that is all we were interested in.

Q. Sir?

A. We were not interested in anything else but that.

Q. Didn't you prefer, Judge, if you could, to derive your authority from the people rather than to go upon your own responsibility in this matter?

A. No, sir.

Q. You preferred to take the bit in your mouth and do as you pleased rather than consult the voice of the people?

A. Well, put that question again. (Question repeated.)

135 Well, that is rather an impertinent question, it seems to me, but I would always rather get the consent of my constituents to do anything when I am acting in a public capacity; that would always be my wish.

Q. Well, then, wasn't that in point of fact your choice, if you could, to act under the vote of the people rather than under the charter?

A. Well, if we had got two-thirds of the qualified voters I don't believe I should have taken that stock under the charter, but we didn't have a two-thirds vote and people were very anxious for a railroad, and a great many were urging us to take stock.

Q. Well, of the people that did vote more than five to one voted in favor of it, didn't they?

A. Five to one?

Q. More than five to one?

A. Yes, sir; about that.

Q. Didn't you consider that was a better basis to act upon than your own individual will in making this subscription?

A. Well, we didn't suppose the people would object to us taking the stock under the charter. If the company preferred us to take the stock under the charter all parties would be satisfied.

Q. You wanted to get valid stock for your company, didn't you?

A. That is what we were trying.

Q. You expected at that time that stock might be of some value in the future?

A. Why a person would naturally suppose that.

Q. Therefore you were desirous of finding out which was the lawful way to take that stock, were you not?

A. Well, at that time I looked at either way being lawful.

136 Q. Well, haven't you just now said you came to the conclusion that it wasn't lawful to take it in pursuance of the vote because you didn't get two-thirds of the qualified voters?

A. No; I will amend that a little, if I have the liberty.

Q. Well, you are at liberty to amend.

A. Of the vote that was cast we had a majority of them, and consequently that was something to back us up in what we were doing,

but if we didn't get the two-thirds of the votes we didn't consider it legal—that is, two-thirds of the legal voters in the county.

Q. Is that your explanation of what you said a moment ago when you said that you considered it was legal either way?

A. Hold on. I want that straight there. I would like to state that again, if Mr. Skinker would allow me to do it. If we had got two-thirds of the qualified voters of the county it would have been legal for us to have taken stock under the vote of the people, and we also considered it legal for us to take stock under the charter.

Q. Now, Judge, was it understood at the time in Knox county that it was competent for the county court to subscribe either under the general law or under the charter of the railroad company?

A. Was it understood, you say?

Q. Yes, sir.

A. By whom?

Q. Well, the question, I have put it. Was it generally understood?

A. Well, I can't say whether it was or not.

Q. Was that understood by the members of the county court?

A. Yes, sir.

Q. Did you so understand it?

A. I did.

137 Q. Did you feel a certainty at that time that you could subscribe under the charter without taking a vote of the people?

A. Yes, sir.

Q. Well, now, what made you feel sure of that?

A. I had read the constitution. I had read the law.

Q. What constitution?

A. Of the State of Missouri, which was in existence at that time.

Q. What was the condition (provision) of the constitution on that subject that led you to that conclusion?

A. Well, I can't give you the exact language in all the constitution.

Q. No; but give us an idea of what provisions you referred to.

A. In the constitution it says an incorporated body may take stock in a railroad by assent of two-thirds of the qualified voters of the county. I think that is the substance.

Q. Is that the provision which, in your judgment, authorized Knox county to subscribe to this company without taking the vote of the people?

A. No, sir.

Q. Well, this charter authorized a subscription to be made without taking a vote of the people, didn't it?

A. Yes, sir.

Q. Did you fully understand that proposition at the time you made this subscription?

A. I think I did.

Q. Sir?

A. I think I did.

Q. Had you ever heard any doubt expressed upon that proposition at that time?

A. Oh, I might have heard something outside of the court among the citizens.

Q. Well, what was the nature of what you heard?

138 A. Oh, it was very little; nothing of any importance that I did hear, much.

Q. Was there anybody that denied the right of the court to subscribe to this company in pursuance of the charter of the company and without a vote of the people?

A. I don't believe I heard any one doubt the authority.

Q. Then do I understand you to say that in Knox county it was considered perfectly well settled at that time that this charter authorized the county court to make a subscription to the M. & M. Railroad Company of its own motion and without taking a vote of the people?

A. Well, that is a question that I don't think any one could answer positive, because I don't know.

Q. Well, what is your impression on that subject?

A. Well, as I said before, I never heard much talk about it; very little, only just around the town of Edina.

Q. Do you know whether that question ever was passed on by the supreme court of the State of Missouri?

A. If it was?

Q. Yes, sir.

A. I know it now.

Q. You know it now?

A. Yes, sir.

Q. Was it passed on?

A. I suppose it has been.

Q. When?

A. Well, there was one, I believe, in 1864.

Q. 1864?

A. I think so. I am not very familiar, of course, with these decision-; of course I am not a lawyer. I am not in any particular business. I am not posted up in such matters as that.

Q. Well, I will ask you this question: Did you know whether, at the time you made this subscription, the supreme court of the State of Missouri had passed on the question whether a subscrip-

139 tion could be made by a county with the Missouri and Mississippi Railroad Company without a vote of the people?

A. No; I didn't know it at that time of my own personal knowledge. I didn't know it.

Q. That wasn't stated to you by Col. Gilstrap or Judge Wilson or Gen. Jones?

A. I believe that Col. Gilstrap at that time did speak something about a decision, but I can't be positive.

Q. Well, did the decision relate to your county—Knox county?

A. If he spoke about it, it fitted our case.

Q. Well, was Knox county a party to the case?

A. No, sir.

Q. Do you know what county was a party to the case?
A. I wouldn't say what county.
Q. Are you not pretty familiar with all the facts in the history of these bonds—in the litigation that has ensued in relation to them?
A. Well, no; I am not, really.
Q. Why not, Judge?
A. After I went out of office I wanted to get this matter off my mind, and I just tried to forget all about it.
Q. Tried to forget all about it?
A. Yes, sir.
Q. Well, now, did you succeed very well?
A. I did for awhile.
Q. During what length of time was it you had thrown this matter off your mind?
A. Well, it was about twelve years.
Q. About twelve years?
A. Yes, sir.
Q. You mean to say, then, Judge——
A. From 1870 up to 1882 or 1883—along there.
Q. Do you mean to say that you didn't think of the
140 matter at all during that period?
A. No, sir; I thought as little about it as I could possibly help.
Q. Well, why was that? You didn't think it was a thing to be ashamed of, did you?
A. No, sir.
Q. Sir?
A. No, sir.
Q. Why was it, then, that you tried to blot out the memory of the facts from your mind?
A. I had had enough of trouble about it up to the time my term of office expired, and I didn't want to have my mind encumbered with anything of the kind.
Q. And during that period of time you didn't think anything about it?
A. I thought but little about it.
Q. Did you discuss the matter at all during that period of time?
A. Hardly any.
Q. Did you avoid discussion of it?
A. I did.
Q. Was a discussion of it ever forced upon you?
A. No, sir; never was.
Q. You didn't talk of it in your family at all.
A. Not that I remember of.
Q. You didn't talk of it with your neighbors?
A. No, sir; I didn't.
Q. Then you began to talk about it when?
A. I couldn't say positive, but I believe it was in 1882 or 1883.
Q. How did it come that you took an interest in the subject again?
A. Mr. Skinker forced it on me.

Q. Where?
A. In this city.
Q. Under what circumstances? By Mr. Skinker you mean the gentleman who is now interrogating you?
A. Yes, sir.
141 Q. Under what circumstances, Judge?
A. Well, I presume he wanted to find out what I knew about it.
Q. What were you doing in the city at that time?
A. I was here as a grand juror—United States grand juror.
Q. How did I come to make your acquaintance?
A. I believe you did through Benjamin Bowen, of Edina.
Q. Benjamin Bowen was then a deputy of the United States marshal, wasn't he?
A. I believe so.
Q. And he introduced me to you?
A. I believe so.
Q. And I had a conversation with you then, didn't I?
A. Yes, sir.
Q. In the old United States court-house, in this city?
A. I think you talked with me there?
Q. Well, that was the first time you had talked about the Knox county bonded debt since 1870, was it, Judge?
A. I believe that you were the first man that ever mouthed that thing to me from that day until then.
Q. Well, do you recollect what you said to me that day?
A. Yes, sir; I think I know pretty near what I stated.
Q. What did you state in relation to the Knox county bonded debt?
A. Now, I can't tell all the conversation. Mr. Skinker wanted to know whether we took that stock under the vote of the people, and I hadn't thought about it before for twelve years or nearabouts; probably a little more. I didn't know how to answer him. It was right on the spur of the moment; I couldn't hardly tell what to say. Mr. Skinker pressed it on me to say. I told him I thought we did. Well, he says, "Aint you positive about it?" I says, "I don't know whether we did or not." I says, "Maybe we did,"
142 and the conversation ran on just about that way all the time, and I never stated to Mr. Skinker that we did take that under that vote of the people—that is, I didn't speak positive about it.
Q. But you did state, as I understand you, that you then believed that you did take the stock in pursuance of the vote of the people?
A. Just let them answers stand as they are. I never said positive.
Q. Well, Judge, that conversation with me has been resting on your mind since then?
A. That very day.
Q. Did you feel after you had said that that you had kind of given yourself away?
A. I was through, I believe, on the grand jury and was dismissed at that time, but I am not right positive about it, but I think I was. I studied right along all the time about that, what I had said to him,

and I left the city in a very short time, and I wasn't out of this city one hour until I was satisfied that I had made a wrong impression on his mind, and I studied all the way home about it, and I studied a couple of days after I was at home, and I was satisfied I was wrong about it. I couldn't rest. I went up to Edina and examined the records, and studying this matter all over it came to me very vividly about the board of directors coming before the court and asking us to take that stock under the charter; examined the record, all; traced everything all up—all I could get of the information that would settle the matter in my mind—and I settled down,
143 just as I have here, that we took that stock under the charter and not under the vote of the people.

Q. Did you discuss the matter with anybody at Edina after leaving this city?

A. I said nothing to no individual about what I had been thinking about or what I had said to Mr. Skinker, except my wife, when I got home. She was the only individual I ever spoke a word to about this until after I had studied the matter all over—went to Edina, examined the records—and I was satisfied I had made a wrong impression on his mind, and I was fully satisfied we took the stock under the charter. After I had settled down to this conclusion, then I had a talk with Judge Wilson; also with Mr. Linville.

Q. Judge, what was there in the records that led you to conclude that you had made an erroneous statement to me?

A. Oh, very little in it.

Q. Was there anything in the record that threw any light on the subject at all?

A. I couldn't say that there was.

Q. Then your change of mind was a revival of recollection rather than any light drawn from the record, wasn't it?

A. Yes, sir; that what come before the court. All the transactions and circumstances that took place during this term of court in May came back to my memory very fresh.

Q. Unassisted, now, by discussion with anybody else?

A. Yes, sir.

Q. How long a conversation was that I had with you?

A. In the court-rom there, it was short.

144 Q. In the court-room it was short?

A. Yes, sir.

Q. In the marshal's office, how long was it?

A. Well, I don't know; I don't know what part of the room we were in. It might have been in the marshal's office. I don't know what office we were in; we were in the building; that is all I can say.

Q. Well, don't you know there were two conversations there with me?

A. Well, I was going to state after that conversation there he took me to his office and we had another conversation about it.

Q. How long was the conversation at my office?

A. It wasn't very long. I might have remained there in your office an hour.

Q. Don't you remember of my taking down some memorandum at the time?

A. I can't say whether you did or didn't; you might.

Q. Now, was any one present at these conversations?

Q. There was no one present in your office that I remember of. Mr. Bowen might have been present while we were talking in the court-house.

Q. Now, Judge, don't you remember Mr. Bowen was present both in the court-house and in my office?

A. No, sir; I don't remember about his being in the office, but still he might have been; I wouldn't say; he might have been; I don't remember that.

Q. Don't you remember you and I and he together talked over in the court-house, and then afterwards, after you had drawn your pay, we three went together to my office?

A. No; I don't remember of him going up to the office—that is, I don't remember about it; still he might, but I don't re-
145 member about that. He was present, I think, in the court-house.

Q. Don't you remember you and he and I went together and took a lunch together, and from there went to my office?

A. We didn't take a lunch together, as I remember.

Q. Sir?

A. We didn't take a lunch together, as I remember; you and I did.

Q. You and I did?

A. Yes, sir.

Q. But Bowen, you think, was not present?

A. I think so; I can't be positive about these things.

Q. Don't you think, Judge, that he was present?

A. I don't think he was.

Q. Well, now, how long were we together, all told, from the time he introduced us until the time you left my office?

A. Oh, well, might have been an hour.

Q. Well, don't you think it was more than two hours?

A. No; I don't.

Q. Sir?

A. I don't.

Q. Well, how long were we at lunch together?

A. Together while we were eating. I don't know how long we did eat.

Q. Wasn't that pretty nearly an hour?

A. No, sir; I never want more than fifteen minutes to eat in.

Q. Well, some people have better appetites than you, maybe.

A. Well, that may be.

Q. Well, you can't state, then, with any certainty how long we were together?

A. No; I can't, because I never tried to remember anything of that kind.

146 Q. Well, don't you remember this, though, Judge, that the matter of the making of that subscription and the issuing of

these bonds, how it was done and by what authority it was done, and the attendant circumstances was the subject of your conversation during pretty nearly the whole time we were together?

A. I don't think we talked about much else.

Q. We talked about that pretty much the whole time, didn't we?

A. Well, you were engaged in some other business; we were not talking all the time about that.

Q. Well, didn't you perceive at that time that my object in inviting you to lunch was to get a chance to talk to you just as long as I could about this matter?

A. I see that now; I didn't think about it then.

Q. Well, isn't it a fact we did talk the whole matter up and down and discussed in it every aspect that we could think of?

A. It matters not how much conversation we had about taking this stock. I never did tell him positive that we did take that stock under a vote of the people.

Q. That is what I wanted to get you to say—whether you did or not say that positive. You didn't say that positively in the presence of Mr. Bowen and myself?

A. Yes, sir.

Q. You didn't?

A. I didn't.

Q. All that you said was that you believed you took it under the vote of the people?

A. Yes, sir; I stated it in this way, "I kind of believe we did."

Q. Didn't you state that a good many times in the conversation between us, which lasted altogether between one and two hours?

A. I wasn't talking on that point half of that time.

147 Q. But you did state that fact a good many times, didn't you?

A. I said it several times, that I believed we did.

Q. Now, Judge, wasn't there a great deal of anxiety in Knox county at and before the time this subscription was made to have a railroad?

A. Yes, sir; there was.

Q. Wasn't there a good deal of enthusiasm manifested on the subject?

A. There was by a part of the people.

Q. As to the rest, what was it, apathy or opposition?

A. Well, you might say apathy.

Q. Did the ninety-eight votes represent the opposition?

A. I couldn't say.

Q. Have you any recollection on that subject?

A. I wasn't over the county. I didn't hear the people talk, and I don't know just where they stood on that; if I had been over the county making speeches, as some were, I probably would have known more about it.

Q. Well, didn't you feel perfectly satisfied that the vote of five hundred and ten in favor to ninety-eight against fairly represented

the sentiments of the people of Knox county in respect to this subscription?

A. No; I think not.

Q. You didn't believe at the time that that was a fair index of their sentiments?

A. No; I hardly thought it was.

Q. Well, what did you think on that subject?

A. At that time, do you mean?

Q. At that time, what did you think on that subject?

A. I thought this, that if every man went out and voted his sentiments it would have been a very close election. I thought that about it.

Q. Do I understand you mean now that some four hundred voters or thereabouts stayed away from the election altogether?

A. Yes, sir.

148 Q. How did you account for that?

A. By the registration.

Q. I say, how do you account for their remaining away from the polls on election day?

A. Well, we had a number of votes polled, you know.

Q. Yes, sir.

A. And we knew about what was registered; consequently that would make four hundred or more that stayed away.

Q. Well, but what reason did you at that time suppose induced them to remain away from the polls?

A. Well, sir, I couldn't tell.

Q. That is one of the things that has been blotted out of your memory during these twelve years, is it, Judge?

A. No; I don't know as it is.

Q. Did you at that time believe that those four hundred people were opposed to this subscription?

A. I don't really know what my opinion was at that time about that.

Q. Well, that is one of the things that escaped your recollection during those twelve years, is it?

A. That is a point I hadn't thought anything about.

Q. Well, as I understand you to say, your opinion was that if all those people had turned out and voted it would have been a mighty close election?

A. Yes, sir; that was my opinion at that time.

Q. Do you mean to say by that that there would probably have been as many or nearly as many votes against subscription as there were in favor of it?

A. I don't believe there wouldn't have been as many against it, but there would have been a great deal of difference, in my opinion; it is only my opinion.

149 Q. Well, then, at the time you made this subscription, as I understand you, you felt that you had the backing of only a bare majority of the qualified voters of Knox county. Is that what you mean to say?

A. Yes, sir.

Q. Sir?
A. Yes, sir.
Q. That you had a backing only of a bare majority?
A. Yes, sir; according to my opinion.
Q. Yes, sir; entertained at that time, I understand?
A. Yes, sir.
Q. Well, then, what induced you to take upon yourself the responsibility of making this subscription when you had no better backing than that?
A. Well, we were very anxious to have a railroad, and that looked like the only way we could get it.
Q. Now, when you say "we" were very anxious whom do you mean?
A. I mean the people—that is, what I believe was a majority of the people—of Knox county. When I say "we" I include or aim to include a majority of the people of Knox county.
Q. Do you mean a bare majority of the people of Knox county or a liberal majority?
A. Yes, sir; a liberal majority.
Q. Was anxious to have a railroad?
A. Yes, sir.
Q. Anxious to have the M. & M. railroad?
A. They wanted some railroad.
Q. Yes, sir; one would suit them about as well as another?
A. Well, a road running one direction would suit some people, and it wouldn't suit some people of the other parts of the county.
Q. Yes, sir; but upon the whole, if I understand you, a liberal majority of the people of Knox county were anxious to have
150 this railroad, the M. & M. railroad, and that is what induced you to make the subscription to the M. & M. Railroad Company. Do I understand you right?
A. You may put that yes.
Q. Did I understand you awhile ago, Judge, to say that when this matter was under consideration in the county court of Knox county you read and considered the charter of the railroad company?
A. Yes, sir.
Q. And particularly that section of the charter that gave you power to subscribe to the company?
A. Yes, sir.
Q. And issue bonds?
A. Yes, sir.
Q. You studied that section, I suppose, particularly, didn't you?
A. At that time I think we did; but I have never seen it from that day to this, or until within the last few weeks.
Q. Well, did those gentlemen who came before you—these lawyers—discuss the meaning of that section of the charter?
A. I think they did, sir.
Q. Was there anything said about paying these bonds some time or other and paying the interest on them?
A. Said when?

Q. At the time you were considering the question of subscribing.

A. I think the matter was discussed fully in regard to taking stock—how to take it; all about it. I think the whole ground was covered at that time.

Q. You shortly after that levied a tax to pay these bonds, didn't you?

A. Yes, sir.

151 Q. Well, was the matter of levying a tax considered at that time?

A. I don't know that it was just at that time.

Q. Well, do you remember the provision of that charter about levying taxes to pay these bonds and the interest on them?

A. Yes, sir; myself and the other two members of the court talked about that matter.

Q. Do you now remember the provision of the charter on that subject?

A. Yes, sir; I guess I do.

Q. What is it?

A. Well, under that charter we understood that we couldn't levy more than one-twentieth of one per cent.

Q. You understood that at the time you made this subscription, did you, Judge?

A. I don't know that we did just at that time, but it was a day or two afterwards; we might have understood it before; I couldn't say. When we come to make a levy, of course the law requires us to know what we are doing if we could understand the law.

Q. Well, the interval that elapsed between the making of the subscription and levying this tax was only three days?

A. I think only three days; very short.

Q. Well, now, do you think you got a perfect understanding of the meaning of the law in that period of three days?

A. No; I had an opinion about that before.

Q. You had an opinion from the start, then, that that charter restricted you to levying a tax of one-twentieth of one per cent. to pay all bonds that were issued under that charter, didn't you?

152 A. Yes, sir.

Q. Well, now, one-twentieth of one per cent. is five cents on the hundred dollars, isn't it?

A. I believe it is.

Q. And you were of the opinion from the very start that you could not levy beyond five cents on the hundred dollars to pay those bonds or the interest on them if they were issued under this charter?

A. That was my opinion.

Q. That was your individual opinion?

A. Yes, sir.

Q. Well, was that Judge Wamsley's opinion?

A. Just at that time I don't know as it was, nor I don't know as it was Plummer's; but after the stock was taken then the question came up how we were to raise funds to pay off those bonds and to pay the interest, and then we began to discuss the one-twentieth of one per cent.

Q. And you were of opinion that you couldn't levy beyond five cents on the hundred dollars?

A. I had been of that opinion before.

Q. You had been previously of that opinion?

A. Yes, sir; but I don't know, we three judges, whether we talked among ourselves on that point before we took the stock.

Q. You talked about everything else, didn't you, touching the issue of these bonds?

A. Pretty much everything.

Q. Pretty much everything besides that?

A. I think so.

Q. You think you omitted, probably, to talk about that, do I understand you to stay?

153 A. I rather think we said very little, if anything, about that until after we took the stock.

Q. Didn't you understand at the time that you took the stock that that meant that you were to issue bonds and with annual interest payable on those bonds, and that you were bound to provide for the payment of that interest?

A. I looked at that just in that very way.

Q. Well, now, as a business man, you looked at it in that way, didn't you?

A. Yes, sir.

Q. Well, now, don't you think that your brother judges looked at it the same way?

A. Well, you ask me what I think about it. I might tell you what I think, but I can't tell you what they did think.

Q. Well, did they say anything to you on that subject prior to the day when you made the subscription?

A. I don't remember that they did.

Q. Did they say anything to you on that subject prior to the day when you levied this tax, May the 16th, 1867?

A. Before the day we made the levy?

Q. Yes, sir.

A. We conversed on that subject, of course, before we made the levy.

Q. Now, are you sure of that?

A. Yes, sir.

Q. That you conversed together as to the amount that you could lawfully levy to pay the interest on these bonds?

A. Yes, sir. I know we conversed about it, and I can give my reasons why.

Q. Well, I just want your knowledge. Go on and give your reasons why.

A. We soon saw, when we came to discuss that matter, that this one-twentieth of one per cent. wouldn't create any fund—wouldn't pay any on the principal; neither would it pay the interest.

154 We didn't know how to make provision for that. I argued that this one-twentieth of one per cent.—we were confined to that. It seemed so to me, I told them. We called in our county attorney, and he claimed this one-twentieth of one per cent. was for

to pay the principal, and we could make a levy to pay this interest just the same as any other debt the county would contract, and we went along in that way. I didn't know at the time—I says, "I don't know whether it is right or wrong. We will go ahead, let it come out as it will."

Q. Then you didn't dissent from the order of the court levying this tax?

A. No, sir.

Q. In 1867?

A. No, sir; I didn't.

Q. Or in 1868?

A. No, sir; nor in 1869.

Q. Nor in 1869?

A. No, sir.

Q. Nor as long as you remained there?

A. No, sir.

Q. They made the order in each of those years upon the theory that they were not limited?

A. Yes, sir.

Q. To five cents on the hundred dollars?

A. Yes, sir; that is the way we did.

Q. And you acted unanimously in making those orders, didn't you?

A. Yes, sir.

Q. The people of Knox county paid the taxes that you levied, didn't they?

A. Yes, sir.

Q. Right straight ahead?

A. Yes, sir.

Q. And the coupons of these bonds were paid right straight ahead, were they not?

A. I believe so; yes, sir.

Q. As long as you remained on the bench?

A. Yes, sir.

Q. Didn't the county officers make settlements with the court and produce them as vouchers?

A. Yes, sir. Well, I would say they were.

155 Q. And the people of Knox county continued after you went off the bench to pay these taxes the same way, didn't they, you paid yours?

A. Yes, sir.

Q. Right along?

A. I think there was no trouble or contention about it.

Q. Until 1875?

A. About all the people knew they were paying taxes. They didn't know what it was about—what it was for.

Q. Didn't inquire?

A. No, sir.

Q. Until about 1875?

A. And have been doing that very same thing up until the last year of paying the tax, asking no questions up to the present time.

Q. Well, now, your M. & M. Railroad Company, you say, was a failure?

A. It was, indeed.

Q. What did they do on that road, anyhow?

A. From Macon City to Edina they graded and bridged. They graded all the road, I think, and bri-ged most of it, if not all, to Edina.

Q. Anything north and east of Edina?

A. Nothing north or east.

Q. Well, then, they did spend some money there?

A. Spent all of ours.

Q. How many miles of that were there graded and bridged in Knox county?

A. Well, I couldn't say. Let us see. Running a line from the county-seat due south would be twelve miles, and it runs diagonally through the county; well, say fifteen miles.

Q. Fifteen miles?

A. Yes, sir.

Q. And the company quit work when?

A. I do not know whether all that work was finished in the year 1868 or not. I am not positive about that. It was either in 1868 or 1869, I think.

156 Q. You think they didn't do any work after 1869?

A. No, sir; not after 1869 they didn't.

Q. But these taxes were paid generally by the people of Knox county up to 1875?

A. So far as my knowledge goes they were.

Q. You never heard any trouble at all about default of interest until about 1875?

A. Well, along 1874 or 1875; along there somewhere; I don't remember.

Q. Yes, sir.

A. I wasn't about the town of Edina much.

Q. How far do you live from Edina?

A. Twelve miles.

Q. In what direction?

A. Southeast.

Q. What is your post office?

A. My post office now is Knox City.

Q. Now, let us understand a little more. Did Judge Plummer—he was presiding judge, I believe?

A. Yes, sir.

Q. Did Judge Plummer express any opinion as to the power of the court to levy a tax?

A. When; at that time?

Q. At that time.

A. Yes, sir.

Q. What did he say?

A. Well, all three of us talked about the matter.

Q. Well, I am trying to get you, one by one. Now, what did Judge Plummer say?

A. Well, he thought we had a right to take stock under the charter.

Q. I am asking you what he said about your power to levy taxes to pay these bonds.

A. Well, he was just like me about that. We didn't know what to do, and we called in the prosecuting attorney to get his opinion about it.

157 Q. Well, do you know whether he had considered that branch of the subject before the subscription was made or not?

A. No, I don't know. It is too far back for me to remember that, I believe.

Q. Well, do you know whether Judge Wamsley had considered the power of the court in reference to taxation before the subscription was made?

A. Well, I couldn't say that he did. I never heard him express himself.

Q. Well, now, did the gentlemen who argued this matter for the railroad company before you express any opinion upon that point?

A. They didn't say one word as I can remember about that; no, sir.

Q. Well, then, if I understand it, the county court of Knox county, upon the persuasion of these gentlemen that represented the railroad company, subscribed one hundred thousand dollars to the railroad company and agreed to issue bonds without taking one thought as to how they should be paid. Is that the fact?

A. Well, I had thought about it.

Q. You had?

A. Yes, sir; but I don't know whether those others two judges did or didn't.

Q. Well, you don't know whether they did or not?

A. No, sir; but the subject soon came up after we did take the stock.

Q. Well, it was in your mind when you were being importuned to take stock, was it?

A. Yes, sir; it was.

158 Q. Did you ask those gentlemen or any of them for advice upon the subject of taxation?

A. No, sir; I did not.

Q. You didn't say a word to them about the matter of payment of these bonds or the interest?

A. No, sir; I didn't say a word to them about it.

Q. And Judge Plummer didn't say anything to them about it?

A. I don't know whether he did or not.

Q. I mean whilst the court was in session?

A. No, sir; I think not while we were in session.

Q. Judge Wamsley didn't say anything about it?

A. No, sir; I think not.

Q. And the clerk of the court didn't make any suggestion on the subject?

A. No, sir; not at that time. They came in before the court in

the morning and got through and went out before noon. We listened to their speeches—what they had to say and so on. Then we took the matter under advisement.

Q. Do you know when those bonds were issued?

A. When they were issued?

Q. Yes, sir.

A. What do I understand by that?

Q. Well, I mean when they were actually delivered to the railroad company.

A. Well, those bonds were lithographed and I believe they were all there at Edina, held there, and they were issued to the company as the work was done, and we took the estimate of the engineer in regard to the amount of work done, and when we got his certificate it showed to us how much we owed the company, and on that certificate the bonds were issued. They would go out at one
159 time and another, so on and so on; but when they went out I couldn't say about that, because some went out one time and another one another as the work progressed.

Q. Could you say when the first of them went out?

A. No, sir; I couldn't fix the day.

Q. Let me see—on the 16th of May the railroad company hadn't begun work in Knox county, had it?

A. No, sir; not on the 16th.

Q. 1867?

A. Yes, sir.

Q. It didn't begin work until long after that?

A. Well, you are now asking me something I have not thought about from the time I left—well, since the work was done—until the present time. Now I can't exactly tell.

Q. Well, was it begun during the summer of 1867?

A. Yes, sir.

Q. Was there any work done in 1867?

A. Yes, sir; I think there was work done in 1867.

Q. But it was a good while after the 16th day of May, 1867, before any bonds were issued at all, wasn't it?

A. Well, what do you mean by a good while?

Q. Well, it was a month, say, or maybe six months?

A. Yes, sir.

Q. Not less than one month?

A. No, sir; I think not.

Q. It might have been six months, might it not?

A. Well, there might have been one or two bonds went out within a month, two or three months, but I don't believe there was many went out until late in the fall. That is my opinion now, but I am not positive about that.

160 Q. Well, were you present when the consultation was had about the framing of these bonds?

A. Yes, sir.

Q. Can you fix the date when that occurred?

A. Well, I was thinking it occurred that same term of court.

Q. That is, during the May term, 1867?

A. Yes, sir; I was thinking it was. I might be mistaken about that, but when that matter came before the court I remember it very well; but the time, I am not so positive about that.

Q. Was that matter entrusted to any particular person—the form of the bonds?

A. No, sir; it wasn't—well, I think not.

Q. Had the clerk of the court anything to do with it?

A. I was just going to state now what was done. We got—or requested, rather—our county attorney to draw up a form; so did our county clerk, Agnew. He drew up a form, and so did Judge Wilson draw up a form, and we had those forms before us; and Gilstrap also drew up a form, which is the very form here of those bonds; and we compared, you know. I don't know whether Judge Wilson did draw up a form now or not, but we compared those forms we had, and there was but very little difference in them; and Gilstrap's form, we looked over it. We couldn't find any catch in it. We were dubious of these railroad fellows—tricky fellows, you know—didn't want to get trapped. We looked over that form; looked over it and we got our clerk to look over it; called in our attorney and he looked over it; couldn't see anything wrong about it.

161 Then we sent for Judge Wilson to come and look at it; a very good business man, a money-loaner, note-shaver. We thought that he would be likely to know if there was any catch in that, and he looked over it, and we finally concluded to take Gilstrap's form of bond. That suited the company and we couldn't see why it wouldn't suit us, and we adopted it.

Q. Gilstrap's had written that there?

A. He had brought that there; but whether it was that same term of court or not I couldn't say; but he brought that form there himself, and he was there when we adopted that form. He might have had it there with him at the same time that we subscribed that stock and presented it to us after we had determined to take the stock and remained there until we decided to adopt that. I am not sure.

Q. Now, you say the clerk, Judge Agnew, he drew up a form of bond?

A. Yes, sir.

Q. And the county attorney prepared a form?

A. Yes, sir.

Q. Do you remember where Judge Agnew got his form from?

A. I don't know anything about it.

Q. Don't you recollect he got it from Sash & Co.'s, here in St. Louis?

A. No, sir. I don't think he did, at least.

Q. Don't you think he wrote down here and got it from Gash & Co., lithographers?

A. No; I don't think he did.

Q. You think not?

A. I don't think he did.

Q. Do you know where he got his from?

A. Who?

162 Q. Agnew.

A. I think it was his own getting up.
Q. He got it up himself?
A. I think so.
Q. And the county attorney?
A. It was his own getting up.
Q. He got up one?
A. Yes, sir; he got up his form.
Q. You thought Gilstrap's was the more artistic of the three?
A. Yes, sir; we thought so. We couldn't see any objection to that.
Q. Well, you took time to consider the matter, didn't you?
A. Yes, sir.
Q. And examined them all carefully?
A. Yes, sir; in open court.
Q. Well, what is your present impression now as to when you adopted that form? Was it that term or the next term of court?
A. I couldn't state positive about it; but I think it was that same term of court.
Q. Well, was it the same day?
A. I don't think it was the same day.
Q. Of course you had to give Mr. Agnew and the county attorney time to prepare a form, didn't you?
A. Agnew had a form drawn up, I believe, before they came up there.
Q. And the county attorney, he prepared his afterwards?
A. I don't know whether he did or not. I believe he had his prepared too.
Q. Well, you couldn't say when it was or what day it was when this form was adopted?
A. I wouldn't say positive which day we did adopt that. I don't know exactly about that.
163 Q. Do you remember what day your court adjourned in the May term?
A. No; I don't know that unless I would examine the record, and I didn't do that.
Q. Well, did they sit at all after the 16th of May?
A. I don't know whether they did or not.
Q. Did they hold an adjourned term that year—and adjourned May term?
A. I expect we did, but I wouldn't say positive; we frequently did that.
Q. Some time in June or maybe in July?
A. Yes, sir; I wouldn't say when we did hold an adjourned term, but it was common to with us to hold an adjourned term. This March term was an adjourned term.
Q. Well, now, I would like, if you can, to have you fix the date when you adopted that form of bond. Was it the 16th of May? That gave you time enough after the subscription to have considered it, didn't it?
A. Yes, sir; it did.
Q. Well, was that the date when you adopted it?

A. I couldn't say positive, but it seems to me as though it was.
Q. As though it was the same date?
A. The 16th.
Q. Well, have you any recollection at all on that subject?
A. I can't recollect very well about adopting the form.
Q. But the truth is, now, the time when you adopted it has escaped your memory. Is that the fact, Judge?
A. Positively, I couldn't say.

Q. Well, now, look here, Judge, isn't this the fact, you
164 didn't adopt the form until the following fall, just before the first of the bonds were issued?

A. We adopted that form, and after we adopted that form we sent our clerk down here to St. Louis to get the bonds lithographed. We had to adopt the form before that was done, and it wasn't very long after we adopted that form until that thing was done, I don't think.
Q. That is, you adopted the form and the bonds were lithographed and you began to issue them pretty much about the same time?
A. It wasn't long after they were lithographed, I don't think. You know it is a good while since then until now.
Q. Are you sure, Judge, that you ever seen those bonds before they came to you lithographed?
A. That I saw them?
Q. Yes, sir; that you ever saw the form of the bonds?
A. Yes, sir.
Q. You know you did?
A. Yes, sir.
Q. You are positive of that?
A. I am.
Q. That fact didn't escape your memory in the twelve years when you put these things aside?
A. It might have passed from my memory, but it all came back very fresh to my memory.
Q. Had the county court ever been requested to make the subscription without a vote of the people?
A. I don't believe it ever had.
Q. You don't believe it ever had?
A. No; I think not.
Q. Was there any petition ever presented to the county court prior to March, 1867, about this matter?

A. About taking stock?
165 Q. Taking stock; yes, sir.

A. If there was I don't remember it.
Q. You don't remember it?
A. No, sir.
Q. How did you come to submit this question to a vote of the people in the first place?
A. We were petitioned by the people to order an election.
Q. You were petitioned by the people to order an election?
A. Yes, sir.

Q. You had never been requested by anybody to subscribe without a vote?

A. No; I think not.

Q. The railroad company had never requested you to do so, had they?

A. Not as I know of; no, sir. They didn't come in and solicit us as a court. They might have spoken to Plummer or Wamsley or some other one of the court, but they never came in in open court and requested anything of the kind.

Q. Did any other railroad company make such a request prior to March, 1867?

A. No, sir.

Q. Was the Quincy, Missouri & Pacific Railroad Company then in existence?

A. No, sir.

Q. Well, Judge, will you state where you supposed when you voted to levy a tax of twenty-five cents on the hundred dollars on the 16th of May, 1867, the authority to levy such a tax came from?

A. Well, all the place that I could see where we had any authority was we had contracted, and we had to make a levy to pay
166 that debt the same as any debt contracted for by the court. That was the only place I could see we had any authority. We received such advice from our county attorney.

Q. Well, did you at that time know that there was a provision in the general railroad law of the State authorizing you to levy taxes to pay railroad bonds and the interest on them?

A. Yes, sir; I knew that was there.

Q. You knew that was there?

A. I did.

Q. Well, did you suppose that conferred any authority on the court to make this levy?

A. No, I didn't, and I wondered at the railroad company for asking us to take that stock under the charter.

Q. You didn't suppose that?

A. I supposed which?

Q. You didn't suppose that that section of the general railroad law conferred any power to levy that tax?

A. To that special enterprise?

Q. Yes, sir.

A. No, sir; I didn't think it did.

Q. That matter was discussed, was it, in your court?

A. Yes, sir.

Q. That was discussed?

A. Yes, sir; it was.

Q. Judge Plummer discussed it?

A. Yes, sir.

Q. And Judge Wamsley discussed it?

A. We all talked that matter over. We didn't hardly think that we had the power under that law to levy a tax to pay the interest and pay off the principal.

Q. Well, why did you think you had the power under that law to levy a tax?

167 A. It was kind of a mixed up matter to me. I couldn't see through it. There seemed to be a conflicting law there. I couldn't get it reconciled. I didn't know what to do.

Q. And you just went ahead and levied a tax anyhow; is that it?

A. Yes, sir; and risked the consequences.

Q. You didn't know whether there was any law for it or not; is that the fact?

A. I didn't think there was any special law.

Q. You didn't think there was any special law?

A. No, sir.

Q. Well, what law did you think there was?

A. A general law we were acting under as a county.

Q. Well, what was there in that general law that you conceived gave you the power to levy this tax?

A. Well, we had the power under the law to make a levy to run the expenses of the county—for building bridges, making roads, and so on, paying officers, and this and that.

Q. Was that power to levy taxes to build bridges, make roads, and so forth, limited or unlimited?

A. I think it was limited. We had separate funds, you know.

Q. Yes, sir.

A. The bridge fund and the road fund, and so forth.

Q. Well, what was the limit on the power of levying taxes for those purposes?

A. I couldn't tell you now. I have never looked up the law since I was out of office. I never have hardly had the statutes in my hands from that day, until within the last two weeks I look a little at the statute.

168 Q. For the purpose of preparing for this case?

A. Yes, sir; I went to Edina and looked over the records; looked at the statute a little bit.

Q. Well, now, Judge, the impressions of the law that you have now to-day announced, are they not rather the result of your recent inquiries than what you remember of the past?

A. No; well, the past has all come fresh to my memory, and what I have examined recently has—the two combined, of course, makes we say what I do.

Q. Well, you were on the county court bench four years, were you not?

Ans. Yes, sir.

Q. During that time you made it your business to familiarize yourself with the laws of the State in relation to taxation, so far as that effected county matters?

A. I tried to inform myself in regard to all the general laws that appertain to our jurisdiction.

Q. Including the revenue law of the State?

A. Well, the revenue that appertained to our county, of course.

Q. Well, now, did you at that time know whether or not there was

any limit fixed by law on the powers of the county court to levy taxes for county purposes?

A. Why, I think I did; I ought to have known it.

Q. Well, do you now remember what that limit was?

A. I do not. As I told you, I have not looked at the statute from the day I went out of office until recently.

Q. Can you give me any approximate idea of what you believed was the limit then?

169 A. I wouldn't undertake to do that.

Q. Do you know what is the limit now in Knox county?

A. No, sir; I don't know anything about that to-day.

Q. Judge, did you become a very unpopular man in consequence of taking part in this subscription?

A. I didn't myself.

Q. You retained the respect and good will of the people of Knox county, having voted for this subscription, did you?

A. Yes, sir; I did with the most of them. Rather unpleasant, though, for awhile. Of course, some men were embittered against me.

Q. Well, now, were you not severely criticised by the newspapers and by your neighbors for your conduct in that matter?

A. The court was.

Q. The court was?

A. Yes, sir.

Q. Were you exempt from the criticisms of the court?

A. Partially so.

Q. On what account?

A. Well, to answer I would have to go out of a line we are on now.

Q. You can go anywhere you choose to answer the question.

A. There was no complaint made in regard to the first one hundred thousand dollars' worth of stock taken.

Q. Yes, sir.

A. The trouble came in afterwards.

Q. Yes, sir; the trouble came in after you left the bench.

A. No, sir. After the one hundred thousand dollars of stock the railroad company requested us to take more stock. I refused to do that, and the other two—they went ahead and took more stock

170 is what raised the rumpus; consequently, persons knew I wasn't in favor of taking any more stock.

Q. Then, Judge, do I understand you to mean there was no objection in Knox county to this first subscription?

A. There was not at that time—up to that day. There is now.

Q. Well, in consequence of what has this feeling grown up since?

A. Because of the failure to get the railroad, partially.

Q. Failure to get the railroad?

A. Yes, sir; if we had the railroad running there to-day, my opinion is there wouldn't be much complaint. Now, I give it to you as my individual opinion, you know.

Q. Yes, sir; people wouldn't mind these bonds if they had the railroad?

A. Well, that is just my simple opinion about it. I might be decidedly mistaken in that.

Q. Well, the people got the Q., M. & P. railroad, didn't they?

A. Yes, sir.

Q. And they kicked against the bonds they issued to them, too, didn't they?

A. Subscribed as townships to that.

Q. And then kicked against paying the bonds, didn't they?

A. Some few did; but not as a general thing.

Q. The townships kicked, didn't they? The interest went in default for a number of years?

A. No; I don't think they did; but I think our interest in my township—I speak of my own township—I think the interest was all paid up.

Q. What is that township?

A. Jeddo.

171 Q. You don't know anything about Center and the other townships?

A. No, sir; I don't know anything about Center. I know about Lyon township; that is the township west. I think they have paid off some of the bonds, and they created a sinking fund, so I have been told by parties in that township.

Q. Where is Col. Gilstrap living now?

A. Well, I can just tell you what I was told, and it is by a man that ought to know; he is in Macon City, living there.

Q. Who objected to this order of the county court on the ground that no particular road was named in the order?

A. Who did object?

Q. Yes, sir. Who did object?

A. Well, I don't know as any individual really objected to that.

Q. Well, did any official object to it on that ground?

A. I don't know as they did.

Q. Well, at the time this subscription was made was anything said about that by anybody?

A. I think not.

Q. You think not?

A. I don't think so.

Q. Can you now remember which it is that the order for a vote omits to state the starting point or the terminus?

A. I might have been wrong in that statement.

Q. You mean to say that it may be the order defines both the starting point and the terminus?

A. Of all three?

Q. Yes, sir.

A. Well, I got it in my mind that there was one of these projects either didn't have a starting point or the terminus. I got that in my own mind. I might be wrong about that.

172 Q. Was the acceptance of this subscription by the railroad company in writing or not?

A. How is that?

Q. Was the acceptance of this subscription by the railroad company in writing or was it verbal?
A. Why, I presume it was in writing.
Q. You presume so?
A. Yes, sir.

Re-examination by Mr. CARR, solicitor for the complainant:

Q. You have testified on cross-examination that the county attorney said they could levy a tax enough to pay the interest on the bonds. Did he give you this opinion, that they could levy this tax by authority of the charter of the M. & M. Railroad Company?
A. No, sir; I don't think he did.
Q. He just gave you the opinion you could levy tax enough to pay the interest on the bonds?
A. Yes, sir; the same as making a levy to defray other expenses of the county.
Q. Wasn't there an opinion entertained at that time by a good many persons that under a proper construction of the charter you could levy tax enough to pay the interest on the bonds and five cents on the hundred dollars as a sinking fund to pay the principal?

Objected to as leading, incompetent, irrelevant, because it doesn't matter what anybody thought, except the county court of Knox county, and the question is not limited to the county court.

173 A. Yes, sir; it was the opinion of some.
Q. In levying a tax of twenty-five cents on the hundred dollars in 1867 to pay the interest accruing on the bonds to be issued, and also a tax of thirty cents on the one hundred dollars in 1868, and also a tax of thirty cents on the hundred dollars in 1869, for the same purpose, did the county court follow the opinion of the county attorney?
A. Yes, sir; we did.
Q. Was he your legal adviser?
A. Yes, sir.

Objected to the question as leading.

Q. Did the county attorney in giving this opinion base it on a right or on the way he construed the charter or not?

Objected to as leading.

A. I don't hardly know what he based his opinion on, but he advised us to go on and said we had the authority to do this and that, and we went ahead.
Q. And did it?
A. Yes, sir; it seemed to me all the time like that thing was getting us into pretty deep water. The law went on to state we should levy for this specific purpose and that specific purpose, you know. Now, I couldn't find much law for that specific thing.
Q. Do you remember whether Col. Gilstrap stated, in giving his

opinion construing the right to subscribe under the charter, as to the amount of tax you could levy in any one year?

A. No; I don't remember anything about what he said.

Q. Was there any attention at that time directed towards the power you had under the charter to levy a tax or was it
174 simply confined to the power to make a legal subscription under the charter?

Objected to as leading.

A. It was confined to making this subscription.

Recross-examination by Mr. SKINKER, solicitor for defendant:

Q. Did the county attorney in giving your court the opinion you could levy a tax of twenty-five cents on the hundred dollars state to you where in the statutes the authority came from?

A. No; he didn't.

Q. He didn't?

A. No; he didn't.

Q. Well, where did you understand it came from?

A. That was something I couldn't understand.

Q. That was something you couldn't understand?

A. No, sir; I couldn't.

Q. Do you mean to say, then, Judge, as a judge of the county court, sworn to obey the laws of the State of Missouri, that you shut your eyes and levied a tax anyhow without knowing where the power came from?

A. Two ruled in that case—there were three of us, you know.

Q. You did not dissent from the order making the levy, did you?

A. I told the other two judges I couldn't see where there was any law for that thing.

Q. You didn't dissent from the order making the levy, did you?

A. I didn't enter anything on record; no, sir.

Q. Well, you voted for a levy, didn't you, in 1867?

A. I didn't assent to it.

175 Q. You voted for a levy in 1867, didn't you?

A. No, sir; I didn't; neither year.

Q. You voted for it in 1868, didn't you?

A. No, sir.

Q. Did you enter any dissent in 1868?

A. No; there was nothing put on record.

Q. Did you vote for it in 1869?

A. No, sir; I didn't vote for it.

Q. Did you enter any dissent in 1869?

A. I did not.

Testimony of A. L. Gilstrap.

ABNER L. GILSTRAP, being duly sworn for defendant, testified as follows (the plaintiff objecting to the whole of this testimony, hereinafter reported):

I reside in Macon City, Mo. I am 73 years old. I am an attor-

ney, and have been practicing law for over forty years. I was appointed by the charter of the M. & M. R. R. Co. a director, and I helped to organize the company in 1866. I was chosen by the board of directors president of the company, and was president for a year, or perhaps longer, from the time the company was organized. I was a director and president on the 13th day of May, 1867, when the county court of Knox county subscribed $100,000 to the capital stock of the M. & M. R. R. Co. A few days before the 13th day of May, 1867, the directors met in Macon City, Mo., and adjourned to meet in Edina, the county-seat of Knox county, Mo., on the 13th day of May, 1867. On the morning of the 13th day of May, 1867, the directors of the M. & M. R. R. Co. met and held a meeting in
Edina for the purpose of obtaining a subscription to the cap-
176 ital stock of the M. and M. R. R. Co. At this meeting Judge E. N. Wilson and other members of the board living in Knox county informed the directors that a special election had been held on the 13th day of March, 1867, to ascertain the sense of the qualified voters in Knox county, whether they would assent to the making a subscription of $100,000 on behalf of Knox county to some railroad running through the county. The Knox county members of the board told us all about the orders of the county court for holding the election and the total number of qualified voters on the registration lists of the county, the number of votes cast for and against assenting to the subscription, and we learned that no notice of the order of the county court made on the 4th day of March, 1867, modifying the original order had ever been given. I think I examined the orders of the county court for myself. My opinion was that the election held on the 12th day of March, 1867, was not legal. Gen'l Jones concurred with me in this opinion; so did Judge Wilson. Several members of the board were opposed to receiving any subscription under that election from the county on account of its illegality. It was my opinion that the county court had full power under the charter of the M. &. M. R. R. Co. to subscribe any amount it saw proper without any election or vote of the people.

I was a member of the constitutional convention which adopted the Drake constitution—the constitution of the State which went into operation the 4th day of July, 1865. Judge E. N. Wilson was State senator from the Knox district when the charter of the M. & M. R. R. Co. was granted. He drew the charter, all except the 13th section. He wrote from Jefferson City to me, at St. Louis, where I
was attending the constitutional convention, to come up to
177 Jefferson City and assist him in drawing the charter. I went up and he showed me what he had done and requested me to draw the 13th section. I worked at it until twelve o'clock that night, when I got it drawn in the shape it passed, and then I handed it to Wilson. He read it over carefully, and after reflecting over it said that would do, and he reported the bill in that shape and it passed just as it had been drawn and reported.

(Plaintiff objected to all of the foregoing testimony.)

I predicated my opinion that the election held on the 12th day

of March, 1867, was illegal on the facts as stated by Judge Wilson and the other members of the board living in Knox county. In my opinion that election was illegal in the following particulars:

1. The proposition submitted to the voters embraced three different railroads to be voted for, and the ballot as cast did not designate which one of them the voter voted in favor of the county subscribing to.

2. There were 1,200 or upwards of qualified voters on the registration lists of the county and two-thirds of all voters on the list had not voted at said election.

No. 3. No notice had been given of the election held under the modified order of March the 4, 1867.

Gen'l Jones and Judge Wilson were of the same opinion that I was. We three went before the county court in the forenoon and made speeches to it, requesting it to subscribe $100,000 to the capital stock of the M. & M. R. R. Co. under the charter alone, and we gave it as our opinion that the court had full power to subscribe under the charter without any vote. We asked the court to ignore the vote cast at the special election held on the 12th day of March preceding. We said that election was illegal in the particulars stated, and that we would not accept a subscription made under that election. Gen'l Jones is dead, Judge Wilson is dead, and Col. Wirt is dead.

178

In the afternoon of that day the county court subscribed $100,000 to the capital stock of the M. & M. R. R. Co. The order authorizing the presiding judge to make the subscription was shown to the directors of the company. We held another meeting of the directors in the afternoon and passed a resolution accepting the subscription. (Plaintiff objected to all of the preceding testimony.) The directors, at the meeting in the afternoon, appointed a committee of three to prepare a form of bonds to be issued in payment of the subscription. I was chairman of that committee and prepared the form of the bonds. It is the same as the form of the bonds issued by Macon county. The only change made from the form of the Macon county bonds was to make the bonds suit Knox county. Macon county had subscribed $175,000 to the M. & M. R. R. Co. about five weeks before that under the charter without any vote. I drew the form of the bonds issued by Macon county.

The following recital in one of the bonds sued on was read to the witness, viz:

"This bond being issued under and pursuant to order of the county court of Knox county for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri" entitled "An act to incorporate the Missouri and Mississippi Railroad Company, approved Feb'y 20th, 1865."

Q. Did you intend to put that recital in the bond?

Ans. I intended precisely what the bond expresses.

179 Cross-examined:

I drew the 13th section of the charter of the M. & M. R. R. Co. I always entertained the opinion that county courts along the line of the railroad could subscribe under that section without any vote of the people. The subscription made by Macon county was $175,000. After it was made there was doubt expressed by some lawyers as to the validity of that subscription, it having been made without any vote of the people. Macon county court refused to issue bonds in payment of that subscription. The company then sued, out of the supreme court of Missouri, a writ of mandamus against Macon county court, compelling it to issue bonds in payment of said subscription. The supreme court decided that Macon county court had full authority to make said subscription without any vote and issued its mandamus accordingly. This decision of the supreme court of Missouri was promulgated October the 25th, 1867, and will be found in 41st Mo. Rep., p. 453. Gen. Jones and myself with A. J. Williams were counsel in that case.

Q. You say you are a lawyer?

Ans. Yes.

Q. As a lawyer, don't you know that the fact of a vote or a recital of a vote could have done the bond no harm?

A. But I didn't want it recited.

Q. But if recited and it turned out to be untrue, still the power to issue under the charter would have supported the bond and no harm could have ensued?

A. Of course not.

Q. Then what — your objection to the vote?

180 A. We didn't believe the vote legal.

Q. But, if illegal, what harm did it do the bond to issue it under the vote?

A. None, of course.

Q. Then it was a matter purely of sentiment?

A. You may so call it.

Q. You live in Macon county?

A. Yes.

Q. That county made large subscriptions to that same company?

A. Yes.

Q. And the county has now repudiated and resists the payment of interest, and you support her in doing so?

A. Yes, sir.

Q. You contend that the 13th section allows the collection of only $\frac{1}{20}$th of one per cent., which does not pay one per cent. of your county bonds?

A. Yes.

Q. As president of the railroad company you received these bonds and sold them to purchasers at full price?

A. Yes.

Q. And you prepared the 13th section, knowing that purchasers would be swindled by it?

A. You have been a railroad president and you know we all do it.

Q. I never was a railroad president, and if railroad presidents have to be guilty of such villainy I hope never to be. Didn't you believe, as a lawyer, that to issue these bonds without a vote was to swindle the purchasers?

A. That was none of my business. I left them to take care of themselves.

Q. As a lawyer you now admit that if these bonds were issued with a vote they are payable in full; if without a vote, then
181 only one per cent. of the interest can be collected and no part of the principal?

A. That seems to be it.

Q. Then your object was to get the county court of Knox Co. to issue bonds with which you could defraud the public and leave the county without liability?

A. I did not say so and I deny the imputation. I wished the bonds paid. I thought taxes could be levied to pay the interest, and that the $\frac{1}{20}$ of one per cent. would be levied to pay the principal.

Q. Did you say that you told the county court you would not take bonds issued under the vote?

A. I think I said so.

Q. Did you mean to say that your board of directors was so determined on defrauding somebody that they resolved not receive bonds under a vote?

A. I did not say that we made any such order on the minutes of the board. We made no such order. We had that talk among ourselves.

Q. But you and Jones & Wilson told the county court that you preferred them issued solely under the charter?

A. Yes.

Q. You all wished the bonds paid and you sold them as good bonds?

A. Yes.

Q. You admit that if voted for they must be paid?

A. Yes.

Q. And that is what you all desired?

A. Yes.

Q. And yet you asked for the very thing which rendered it impossible to have them paid?

A. I told you that was not our business.

Q. Jones & Wilson are dead and you are the only one left of those who made this extraordinary request of the county court?

182 A. I am the only one left.

Q. And you live in Macon county, whose bonds you sold to innocent purchasers for a full price, and now assert that the county's liability is bounded by $\frac{1}{20}$ of one per cent., which pays less than one per cent. per annum on the bonds?

A. I am not responsible for all that.

Q. You want the bonds paid, you say?

A. Yes.

Q. If these one hundred thousand dollars were issued under a vote your wishes will be gratified and these bonds will be paid?

A. I suppose so.

Q. You never talked to the court or the members again in regard to it?

A. I did not.

Q. All you wanted was bonds that would be paid?

A. That was all.

Q. If a vote made them better you didn't object to the vote?

A. No; but I never thought the vote legal.

Q. But you admit that if issued under a vote and the vote proved to be illegal that would not affect the validity of the bonds?

A. I so admit.

Q. You wished the bonds paid, and if voted for they would be paid. If not voted for, they would not be paid; and to issue under the vote did not and could not impair or invalidate them. Then why did you desire something that would frustrate your own wishes?

A. You can put it as you please.

Q. Your object in going to Edina was to get $100,000 of Knox county bonds?

A. Yes.

Q. Don't you know it was the court that raised the ques-
183 tion of legality of the vote and your directors, in you- eager-
ness to get the bonds, assured the court that they could issue bonds without a vote?

A. We all thought the court could issue without a vote and we so told the court.

Q. And the court objected to issue unless justified by a vote?

A. The court wanted to issue bonds and so did we.

Testimony — Linville.

PHILLIP B. LINVILLE, being duly sworn, testified as follows:

I live in Edina, Knox Co., Mo.; have lived there since 1844. I am now engaged in banking business. I was present in the court-room of the county court of Knox county, Mo., when some of the directors of the M. and M. R. R. Co. applied to the county court to subscribe to the M. and M. R. R. Co. Col. Abner L. Gilstrap requested the county court to subscribe under the charter of the company without any vote; so did Gen'l Jones. They both made speeches to the court. I heard their speeches. They said the county court had full power to subscribe under the charter without any vote of the people, and they asked the court to subscribe under the charter of the company. They gave it as their opinion that the special election which had been held in March preceding was illegal, because two-thirds of all the qualified voters in the county had not voted at that election in favor of the proposition to subscribe. They wanted the bonds issued under the charter of the railroad company. Col. Gilstrap read the 13th section of the charter, and then said the county court had full
184 power under it to subscribe and to issue bonds under that section without any vote, and it would not be legal to make the subscription and issue bonds under the vote which had been given on the 12th of March, 1867.

The speeches of Gilstrap and Jones giving their reasons for objecting to the subscription being made under the vote were much fuller than I have stated. I think they stated other reasons for objecting to the subscription being made under the vote which I do not now call to mind. Col. Gilstrap told the court to pay no attention to the vote, but to go on and issue the bonds under the charter of the M. & M. R. R. Co. Col. Wirt was a director from Knox county. He made a speech urging the county court to subscribe under the charter of the M. and M. R. R. Co., saying to the court that he thought the vote illegal, and gave his reasons why. Gen. Jones was a lawyer at Macon City, and his reputation was that of a good lawyer. He stood high; so did Col. Gilstrap. Gen'l Jones and Col. Wirt are both dead. Objection was made to the form of the ballot. The proposition submitted three railroads, and the ballot didn't designate which one of the three.

Plaintiff objected to all of the above testimony of Linville and asked that it be excluded from the jury.

Cross-examination of LINVILLE:

Q. You live in Knox county?
A. Yes.
Q. You are not a lawyer?
A. No.
Q. You say you did not understand the legal questions discussed on that day?
A. No; I did not.
Q. You sustained *in* the county court of Knox county in its repudiation of these bonds and its attempt to deny a vote?
A. I have always desired a compromise.
185 Q. You think, then, as the bonds were sold for a fair price and the proceeds put into a road-bed, they ought to be paid?
A. I think they ought to be compromised, and I have always favored it.
Q. Do you know what action, if any, the board of directors of the company took?
A. I do not.
Q. Do you know what the court said in regard to the issue of the bonds, whether under the vote or not?
A. I know nothing of that.
Q. Did the court or any member of it make any reply to the speeches?
A. I heard none.
Q. Did not these directors urge the county court to issue the bonds?
A. Yes; they came to get the bonds. That was my understanding.
Q. And the county court was in doubt whether to issue them or not?
A. That was my understanding.

Q. And the directors told the court they had the power to issue the bonds, anyhow, without any vote?

A. Yes.

Q. And the court was hesitating about issuing unless justified by a vote?

A. They did not seem to like to issue the bonds.

Q. And the directors urged them to issue, regardless of any vote?

A. Yes; they said the court had power to issue without a vote, and some of them said they preferred them without.

Q. But the court hesitated to act?

A. That seemed to be the question.

186 Q. Don't you know that the county court was refusing to issue these bonds unless there had been a vote, and these directors were trying to make them believe they had power to issue and ought to issue, whether there was a vote or not?

A. I know the directors wanted the bonds and expressed their belief that the court could issue without a vote.

Q. And the court didn't believe them?

A. I don't know about that.

Q. An- you never heard any member of the court say how the bonds were to be issued or how they were issued?

A. I never did.

Q. Don't you know that before the Macon county case was decided no court in your county would have dared issue bonds without a vote?

A. I don't know about that. I know that the question whether there was a vote or not was the question discussed that day.

Q. Don't you know that that was the only question discussed that day?

A. It was discussed, I know.

Testimony of Jacob Pugh.

Major JACOB PUGH, being duly sworn, testified as follows:

I live in Edina, Knox county, Mo.; have lived there for 40 years. I followed the dry goods business for 30 years. Later I was in the lumber business. I remember the day the directors of the M. and M. R. R. Co. met in Edina and made speeches to the county court of Knox county in regard to subscribing to the capital stock of the M. & M. R. R. Co. I was in the court-room most of the time during their speeches to the county court. Abner L. Gilstrap said to the county court that it had the authority under the charter of the M. and M. R. R. Co. to subscribe to its capital stock

187 and to issue bonds in payment thereof, without any vote of the people. I also heard Col. Gilstrap tell the county court that it had no authority to subscribe or issue bonds under the vote which had been taken on the 12th day of March preceding; that election was illegal, and stated wherein it was illegal. I was one of the registration officers of Knox county in 1886 (1866), and he helped to register the voters of the county. A regular registration book was made out for each township in the county and filed in the county

The speeches of Gilstrap and Jones giving their reasons for objecting to the subscription being made under the vote were much fuller than I have stated. I think they stated other reasons for objecting to the subscription being made under the vote which I do not now call to mind. Col. Gilstrap told the court to pay no attention to the vote, but to go on and issue the bonds under the charter of the M. & M. R. R. Co. Col. Wirt was a director from Knox county. He made a speech urging the county court to subscribe under the charter of the M. and M. R. R. Co., saying to the court that he thought the vote illegal, and gave his reasons why. Gen. Jones was a lawyer at Macon City, and his reputation was that of a good lawyer. He stood high; so did Col. Gilstrap. Gen'l Jones and Col. Wirt are both dead. Objection was made to the form of the ballot. The proposition submitted three railroads, and the ballot didn't designate which one of the three.

Plaintiff objected to all of the above testimony of Linville and asked that it be excluded from the jury.

Cross-examination of LINVILLE:

Q. You live in Knox county?
A. Yes.
Q. You are not a lawyer?
A. No.
Q. You say you did not understand the legal questions discussed on that day?
A. No; I did not.
Q. You sustained *in* the county court of Knox county in its repudiation of these bonds and its attempt to deny a vote?
A. I have always desired a compromise.
185 Q. You think, then, as the bonds were sold for a fair price and the proceeds put into a road-bed, they ought to be paid?
A. I think they ought to be compromised, and I have always favored it.
Q. Do you know what action, if any, the board of directors of the company took?
A. I do not.
Q. Do you know what the court said in regard to the issue of the bonds, whether under the vote or not?
A. I know nothing of that.
Q. Did the court or any member of it make any reply to the speeches?
A. I heard none.
Q. Did not these directors urge the county court to issue the bonds?
A. Yes; they came to get the bonds. That was my understanding.
Q. And the county court was in doubt whether to issue them or not?
A. That was my understanding.

Q. And the directors told the court they had the power to issue the bonds, anyhow, without any vote?

A. Yes.

Q. And the court was hesitating about issuing unless justified by a vote?

A. They did not seem to like to issue the bonds.

Q. And the directors urged them to issue, regardless of any vote?

A. Yes; they said the court had power to issue without a vote, and some of them said they preferred them without.

Q. But the court hesitated to act?

A. That seemed to be the question.

186 Q. Don't you know that the county court was refusing to issue these bonds unless there had been a vote, and these directors were trying to make them believe they had power to issue and ought to issue, whether there was a vote or not?

A. I know the directors wanted the bonds and expressed their belief that the court could issue without a vote.

Q. And the court didn't believe them?

A. I don't know about that.

Q. An- you never heard any member of the court say how the bonds were to be issued or how they were issued?

A. I never did.

Q. Don't you know that before the Macon county case was decided no court in your county would have dared issue bonds without a vote?

A. I don't know about that. I know that the question whether there was a vote or not was the question discussed that day.

Q. Don't you know that that was the only question discussed that day?

A. It was discussed, I know.

Testimony of Jacob Pugh.

Major JACOB PUGH, being duly sworn, testified as follows:

I live in Edina, Knox county, Mo.; have lived there for 40 years. I followed the dry goods business for 30 years. Later I was in the lumber business. I remember the day the directors of the M. and M. R. R. Co. met in Edina and made speeches to the county court of Knox county in regard to subscribing to the capital stock of the M. & M. R. R. Co. I was in the court-room most of the time during their speeches to the county court. Abner L. Gilstrap said to the county court that it had the authority under the charter of the M. and M. R. R. Co. to subscribe to its capital stock

187 and to issue bonds in payment thereof, without any vote of the people. I also heard Col. Gilstrap tell the county court that it had no authority to subscribe or issue bonds under the vote which had been taken on the 12th day of March preceding; that election was illegal, and stated wherein it was illegal. I was one of the registration officers of Knox county in 1886 (1866), and he helped to register the voters of the county. A regular registration book was made out for each township in the county and filed in the county

clerk's office. After the townships had all been registered by the township officers the registration officers for all the townships met at the court-house and formed a kind of court of appeals, to which any person thinking himself aggrieved by not being registered as a qualified voter could appear and have his case reviewed. I was a member of this board of review and had occasion to examine the registration books.

I have looked for them frequently in every part of the county clerk's office where they were likely to be found and I could not find them. I have not seen them since 1869. The county clerk was the legal custodian of them. I knew there were between 1,200 & 1,300 names of voters on the registration lists. Col. Gilstrap and Gen. Jones both said that the special election was illegal, because two-thirds of all the qualified voters in the county had not voted at said election for the subscription. Another objection was there was no notice given of the election to be held under the modified order of the county court made on the 4th day of March, 1867, and another objection was that the order submitting the question
188 to the voters did not specify which one of these railroads the voters voted in favor of making the subscription to; or, in other words, the proposition as submitted to the voters was too indefinite. Both Gilstrap and Jones requested the county court to subscribe under the charter of the M. and M. R. R. Co. alone and to ignore the vote given at the special election on account of its illegality.

Cross-examination of PUGH:

Q. You live in Knox county?
A. Yes.
Q. You are not a lawyer?
A. No.
Q. You say you did not understand the legal questions discussed on that day?
A. No; I didn't.
Q. You sustain the county court of Knox county in its repudiation of these bonds and its attempt to deny a vote?
A. I have always desired a compromise.
Q. You think, then, as the bonds were sold for a fair price and the proceeds put into a road-bed, they ought to be paid?
A. I think they ought to be compromised and I have always favored it.
Q. Do you know what action, if any, the board of directors of the company —?
A. I do not.
Q. Do you know what the court said in regard to the issue of the bonds, whether under the vote or not?
A. I know nothing of that.
Q. Did the court or any member of it make any reply to the speeches?
A. I heard none.

189 —. Did not these director- urge the county court to issue the bonds?

A. Yes; they came to get the bonds. That was my understanding.

Q. And the county court was in doubt whether to issue them or not?

A. That was my understanding.

Q. And the directors told the court they had power to issue the bonds, anyhow, without any vote?

A. Yes.

Q. And the court was hesitating about issuing unless justified by a vote?

A. They did not seem to like to issue them.

Q. And the directors urged them to issue, regardless of any vote?

A. Yes. They said the court had power to issue without a vote, and some of them said they preferred them without.

Q. But the court hesitated to act?

A. That seemed to be the question.

Q. Don't you know that the county court was refusing to issue these bonds unless there had been a vote, and these directors were trying to make them believe they had power to issue and ought to issue, whether there was a vote or not?

A. I know the directors wanted the bonds, and expressed their belief that the court could issue without a vote.

Q. And the court didn't believe them?

A. I don't know about that.

Q. And you never heard any member of the court say how the bonds were to be issued or how they were issued?

A. I never did.

190 Q. Don't you know that before the Macon county case was decided no court in your county would have dared issue bonds without a vote?

A. I don't know about that. I know that the question whether there was a vote or not was the question discussed that day.

Q. But don't you know that was the only question discussed that day?

A. It was discussed, I know.

Testimony of F. M. Miller.

FRANK M. MILLER, being duly sworn, testified as follows: I reside in Edina, Knox county, Missouri, and am clerk of the county court of Knox county. The statement of the bonded indebtedness of Knox county published in the Knox County Democrat July 31, 1879, August 7th, 1879, and August 21st, 1879, and read in evidence by plaintiff, is not on the records of the county court of Knox county, nor is it on file in the county clerk's office; at least I cannot find it. The paper read in evidence showing $100,000 of the bonds of Knox county to have been issued under a vote of the people held March 12, 1867, is in the handwriting of Samuel Ennis,

who was clerk of the county court of said county from Jan'y, 1875, to Jan'y, 1879, and again from Jan'y, 1883, to March, 1887; and Frank P. Hall was clerk from Jan'y, 1879, to Jan'y, 1883. It is posted in the front part of the book, which contains a list of the bonds issued by Knox county, their dates, denomination, &c. It is not written on one of the original leaves of the book, but has been pasted in it. This book is known as the bond register of Knox county.

This was all the evidence in the case.

191 After the argument on both sides to the jury had been closed and before the jury had retired to consider of their verdict the defendant, by its attorney, requested the court to give separately the following instructions to the jury in the order in which said instructions are numbered, viz:

Defendant's Instructions Refused.

The court instructs the jury that the ballot cast at the special election held on the 12th day of March, 1867, did not designate which one of the three railroads or railroad companies it was cast in favor of; that the county court of Knox county could not determine from said ballot to which one of said railroads or railroad companies it should make the subscription in question; that said ballot was void for uncertainty, and the said county court could not legally act under it as authority to make said subscription.

If the jury believe from the evidence that the subscription in question was not made under and by authority of the special election held on the 12th day of March, 1867, then the county of Knox cannot be estopped by the statement or statements of the county clerk read in evidence or the act of the county court in praying for the publication of said statement or statements.

If the jury believe from the evidence that the justices who composed the Knox county court at the time of making the subscription in question discussed among themselves whether said special election had been held in conformity to law and were not satis-

192 fied that it had, then they will find that said subscription was not made nor the bonds with the coupons sued on issued under and by authority of said election.

The court further instructs the jury that the county court was the proper tribunal to pass upon and decide whether the special election held on the 12th day — March, 1867, was held in conformity to law. Now, if the jury believe from the evidence that the county court did not pass upon and decide that said election was held in conformity to law, then they will find that the subscription in question was not made nor the bonds with the coupons sued on issued under and by authority of said special election.

The court further instructs the jury that the county court of Knox county is and was at the time of the making of the subscription in question a court of record; that whatever action it took in regard to passing upon and determining whether the special election held

on the 12th day of March, 1867, for the purpose of taking the sense of the qualified voters of said county as to whether the county court should make said subscription or not can only be shown by the record of said court, and in this case there is no evidence that said court ever passed upon and determined whether said special election was held in conformity to law or not.

The court instructs the jury that there were two laws in force under which the county court of Knox county was author-
193 ized to subscribe the one hundred thousand dollars in question to the capital stock of the M. & M. Railroad Company at the time when such subscription was made. The one was the act of the General Assembly of the State of Missouri, under which said railroad company was incorporated, entitled "An act to incorporate the M. & M. Railroad Company," approved February 20th, 1865, and the other was the authority conferred by the general statutes of 1866. Under said act of February 20th, 1865, the county court had full authority to make said subscription without the assent of two-thirds of the qualified voters of said county, and under the general statutes of 1866 the county court had no authority to make said subscription without the assent of two-thirds of the qualified voters of said county given at an election held for the purpose of obtaining such assent. The issue in this case is whether the subscription in question was made by said county court under said special act or under the general law. The plaintiff alleges that said subscription was made and the bonds with coupons sued on were issued by said county court under and pursuant to a special election held in said county on the 12th day of March, 1867, under an order of said county court made on the 4th day of March, 1867, whereat two-thirds of the qualified voters of said county voted in favor of and assented to the making of said subscription. This allegation is denied by the defendant, and it alleges that said subscription was made under and by authority of said special act alone and the bonds with the
194 coupons sued on issued in part payment of said subscription.

The bonds have this recital on their face, viz: "These bonds were issued under and pursuant to an order of the county court of Knox county for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri entitled 'An act to incorporate the Missouri and Mississippi Railroad Company,' approved February 20th, 1865." The court instructs the jury that the burden of proof is on the plaintiff to prove its said allegation; that to overcome said recital in the bonds the plaintiff must prove by clear, positive, full, and explicit evidence that said recital was put into said bonds by mistake. Now, if the jury believe from the evidence that said county court made said subscription under and by authority of said special act and issued said bonds with coupons in part payment thereof, then they will find for defendant.

If the jury believe from the evidence that the cause of action on the bonds dated October, 1867, accrued more than ten years before the commencement of the suit, they will find for the defendant as to such bonds.

The court refused to give said instructions and each of them, although it was separately requested to give each of said instructions by itself. To this refusal of the court to give said instructions and each of them the defendant, by its attorney, then and there duly excepted at the time. The court then delivered to the jury
195 the following charge, viz:

Charge to the Jury.

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

NINTH NAT'L BANK OF NEW YORK
vs.
KNOX COUNTY, MISSOURI.

THAYER, *D. J.:*

GENTLEMEN OF THE JURY: The case which you are to determine (as you are aware) is an action on certain bonds and coupons issued by Knox county.

It stands admitted that the bonds and coupons in suit were executed and put in circulation by Knox county, so that you will take that fact as conceded.

The controversy, so far as you are concerned, arises over the question whether the bonds in suit were issued in pursuance of a power conferred on the county by the 13th section of the charter of the Missouri & Mississippi R. R. Co. or by virtue of the 17th section of the general railroad law of the State which was in force on May 13th, 1867, the day the county court ordered the issuance of the bonds.

I will read you the two sections last referred to. Section 13 of the railroad charter is as follows: "It shall be lawful for the corporate authorities of any city or town, the county court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor and levy a tax to pay the same not to exceed $\frac{1}{20}$ of 1% upon the assessed value of the taxable property for each year."

Section 17 of the general railroad law is in the following
196 language: "It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town to take stock for such county, city, or town in or loan the credit thereof to any railroad company duly organized under this or any other law of the State, provided that $\frac{2}{3}$ of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent to such subscription."

You will observe, gentlemen, that here are two different statutes under either one of which or under both the county court of Knox county might lawfully issue bonds in aid of the building of a railroad through the county. Acting under one statute, the county court could issue bonds of its own motion without a popular vote; acting under the other, a vote of the people was necessary to validate the issue.

Now, the main question which you must determine in this case is whether the county court of Knox county issued the bonds in suit pursuant to the power conferred on it by section 13 of the railroad charter and without any refference to a popular vote or whether the court issued the bonds in obedience to a popular vote and because more than two-thirds of those voting on the proposition favored an issuance of bonds.

If the evidence in this case satisfies you that in issuing the bonds now sued on the county court of Knox county intended to and did act solely in pursuance of the power conferred on it by the 13th section of the railroad charter which I have read to you and without reference to any authority conferred by a vote of the people,
197 then you will answer the 1st question submitted to you in the affirmative and you will answer the 2nd question in the negative, and you may in that event answer the 3rd and 4th interrogatories according as you find the fact to be.

The questions submitted to you are as follows:

First. Were the bonds sued upon in this case issued by the county court of Knox county solely in pursuance of power conferred by the 13th section of the Missouri and Mississippi railroad charter?

Second. In issuing the bonds sued upon did the county court of Knox county intend to issue the same pursuant to power conferred by section 17 of the general railroad law in force on May 13th, 1867, and in accordance with a vote of the people of Knox county authorizing such issue?

Third. Was an election held in Knox county, Missouri, previous to the issue of the bonds in suit to authorize a subscription of one hundred thousand dollars to the stock of a railroad corporation running on the line of the Missouri & Mississippi railroad as projected?

Fourth. Did two-thirds of the persons voting at such election vote in favor of such subscription and the issuance of bonds to pay the same?

On the other hand, if you find that the proposition embraced in the two orders of the county court of Knox county of date February 6th, 1867, and March 4th, 1867, was submitted to the voters of the county at an election held for that purpose; that more than $\frac{2}{3}$ of those voting at such election voted in favor of the proposition; and if you find that the county court subscribed to stock in
198 the Missouri and Mississippi Railroad Company and issued the bonds in suit in pursuance of power conferred by such vote, and that the projected route of said railroad was on either line or route mentioned in said orders, then you will answer question No. 1 in the negative and questions Nos. 2, 3, and four in the affirmative.

In this connection I will further add, gentlemen, that if you find from the evidence that in issuing the bonds in suit the county court acted both in pursuance of power conferred by the railroad charter in question and also in reliance upon a popular vote previously taken, whereat more than $\frac{2}{3}$ of those voting favored a subscription and the issuance of bonds to pay for the same, then and in that

event you will answer the first question in the negative and the 2nd, 3rd, and 4th question in the affirmative.

It was competent for the county court to rely and act upon both the power conferred by the railroad charter and upon power derived from the general railroad law and a popular vote taken in pursuance of the same. Such action on the part of the county judge would not be inconsistent. They might well invoke the aid of any and all laws that were supposed to confer power on the county court to make the subscription in question or that might confer such power, and if they did so act with reference to and relying upon both said laws, then, although the judges may have had doubts of the validity of the election, the issue of bonds was not made solely under the railroad charter, and you should answer the 1st question in the negative and the 2nd, 3rd, and 4th questions in the affirmative, provided it also appears that an election was held as be-
199 fore stated and that more than $\frac{2}{3}$ of those voting thereat favored the subscription.

In the course of the trial something has been said respecting the form and validity of the two orders of the county court of Knox county of date February 6th and March 4th, 1867, which have been read in evidence and which provided for the submission of a certain proposition to the voters of Knox county.

With reference to the orders in question I will say that they are good and sufficient in law, although no particular railroad corporation is mentioned in such orders. If a proposition such as is contained in those orders was submitted to a vote of the people at an election called for that purpose and more than $\frac{2}{3}$ of all the persons voting at the election voted in favor of the proposition, then such vote was sufficient in law to authorize the county court to subscribe for stock in the Missouri and Mississippi railroad and to issue the bonds of the county in payment therefor, provided the route of the Missouri and Mississippi railroad passed through Knox county on either line indicated in said order.

That is to say, gentlemen, it was competent for the people of the county to give the county court a general power to subscribe to the stock of any railroad that might construct a railroad through the county on either one of several prescribed routes. It was not necessary that the name of the corporation in which it was proposed to subscribe stock should be specified in the proposition submitted to the voters, and the fact that it was not specified does not impair the validity of the orders, and it does not impair the validity of
200 any action which the county court may have taken on the faith of an election held under the same.

I will furthermore say, gentlemen, that the fact that there were over 1,000 registered voters in Knox county when the election was held, and that 510 votes only were cast in favor of issuing bonds, did not impair the validity of the election or the bonds. The law only required that $\frac{2}{3}$ of all who voted at the election should vote in favor of an issue of bonds.

I will also say that the fact that the election took place within less than five weeks after March 4, 1867, when the first order for an

election was modified, and that five weeks' notice was not given after that day, did not impair the validity of the election or the bonds; therefore, if you find that in point of fact the county court acted in reliance upon the vote of the people in issuing the bonds, then the validity of the bonds was not affected or impaired by reason of any of the objections urged by counsel against the validity of the election or against the manner in which the vote was canvassed.

Now, gentlemen, the burden of showing that the county court intended to issue the bonds under authority conferred by a vote of the people or in part reliance thereon rests upon the plaintiff because it has averred that they were so issued, and it is its duty to establish the fact so averred.

In arriving at a conclusion upon the issues submitted to you as to which law the county court intended to act under, you are
201 privileged to consider all the facts and circumstances of the case as developed by the testimony.

You may look at the recital contained in the bonds (which in my opinion is not conclusive on the question at issue), but you will give the recital such weight as you think it deserves.

You will also consider the subsequent action of the county court in the matter of levying more than $\frac{1}{2}\frac{1}{0}$ of one per cent. per annum for a period of several years to pay interest on the bonds.

You may also consider any entries or recitals appearing on the bond register of the county with reference to the bonds in suit and any statements which the county court of Knox county caused to be published concerning the bonds.

From all such documents as are in evidence, as well as from the oral testimony, you will determine what was the true intent of the county court in issuing the bonds—that is to say, whether they intended to act exclusively under the railroad charter or under authority conferred by a popular vote or under both powers.

In conclusion, gentlemen, I ask you to take this case and dispose of the issue of fact which I have submitted to you fairly and impartially, without prejudice for or bias against either party. It is your sworn duty as jurors to decide this case with the same degree of fairness that you would decide a controversy between two private individuals. I have confidence that you will endeavor to determine the issue in the case in the same spirit of fairness and justice
202 to both parties that I feel sure would actuate you if the suit was between two natural persons.

You will return a general verdict in favor of plaintiff on the bonds and coupons, and you will also answer the special issues of fact submitted to you.

Obj. of Def't to Charge.

The defendant, by its attorney, objected to the following words in said charge, viz: "Or under both," where they occur between the words "under either one of which" and "the county court of Knox county."

The court overruled said objection and gave said words to the jury as part of its charge.

To the giving of said words as part of said charge the defendant, by its attorney, then and there duly excepted.

The defendant, by its attorney, also objected to the following words in the third interrogatory which was submitted to the jury in said charge, viz: "A railroad corporation running on the line of the Missouri and Mississippi railroad as projected."

The court overruled said objection and gave said words as part of its charge to the jury.

To the giving of said words as part of said charge the defendant, by its attorney, then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, viz: "On the other hand, if you find that the proposition embraced in the two orders of the county court of Knox county, of date of February 6, 1867, and March 4, 1867, and submitted to the voters of the county at an election held for that purpose, that more than two-thirds of all those voting at such election voted in favor of the proposition, and if you find
203 that the county court subscribed to stock in the Missouri and Mississippi Railroad Company and issued the bonds in suit in pursuance of power conferred by such vote, and that the projected route of said railroad was on either line or route mentioned in said orders, then you will answer question No. 1 in the negative and questions No. 2, 3, and 4 in the affirmative."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, to wit:

"In this connection I will further add, gentlemen, that if you find from the evidence that in issuing the bonds in suit the county court acted both in pursuance of power conferred by the railroad charter in question and also in reliance upon a popular vote previously taken, whereat more than 2-thirds of those voting favored a subscription and the issuance of bonds to pay for the same, then and in that event you will answer the first question in the negative and the 2nd, 3rd, and 4th questions in the affirmative."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, viz: "It was competent for the county court to rely and act upon both the power conferred by the railroad
204 charter and upon power derived from the general railroad law and a popular vote taken in pursuance of the same. Such action on the part of the county judges would not be inconsistent. They might well invoke the aid of any and all laws that were supposed to confer power on the county court to make the subscription

in question or that might confer such power; and if they did so act with reference to and relying upon both said laws, then, although the judges may have had doubts of the validity of the election, the issue of bonds was not made solely under the railroad charter, and you should answer the 1st question in the negative and the 2nd, 3rd, and 4th questions in the affirmative, provided it also appears that an election was held, as before stated, and that more than 2-thirds voting thereat favored the subscription."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, viz: "In the course of the trial something has been said respecting the form and validity of the two orders of the county court of Knox county of date February 6th and March 4th, 1867, which have been read in evidence and which provided for the submission of a certain proposition to the voters of Knox county. With reference to the orders in question I will say that they are good and sufficient in law, although no particular railroad corporation is mentioned in such orders.

205 If a proposition such as is contained in these orders was submitted to a vote of the people at an election called for that purpose and more than 2-thirds of all the persons voting at the election voted in favor of the proposition, then such vote was sufficient in law to authorize the county court to subscribe for stock in the Missouri and Mississippi railroad and to issue bonds of the county in payment therefor, provided the route of the Missouri and Mississippi railroad passed through Knox county on either line indicated in said orders—that is to say, gentlemen, it was competent for the people of the county to give the county court a general power to subscribe to the stock of any railroad that might construct a railroad through the county on either one of the several prescribed routes; it was not necessary that the name of the corporation in which it was proposed to subscribe stock should be specified in the proposition submitted to the voters, and the fact that it was not specified does not impair the validity of the orders, and it does not impair the validity of any action which the county court may have taken on the faith of an election held under the same."

The court overruled said objection and gave such proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, viz: "I will also say that the fact

206 that the election took place within less than five weeks after March 4, 1867, when the order for an election was modified, and that five weeks' notice was not given after that day, did not impair the validity of the election or of the bonds. Therefore, if you find that, in point of fact, the county court acted in reliance upon the vote of the people in issuing the bonds, then the validity of the

bonds was not affected or impaired by reason of any of the objections urged by counsel against the validity of the election or against the manner in which the vote was canvassed."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, viz: "You may look at the recital contained in the bonds (which, in my opinion, is not conclusive on the question at issue), but you will give the recital such weight as you think it deserves."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge: "You will also consider the subsequent action of the county court in the matter of levying more than
207 1-twentieth of one per cent. per annum for a period of several years to pay interest on the bonds."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, viz:

"You may also consider any entries or recitals appearing on the bond register of the county with reference to the bonds in suit and any statements which the county court of Knox county caused to be published concerning the bonds."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, viz:

"From all such documents as are in evidence, as well as from the oral testimony, you will determine what was the true intent of the county court in issuing the bonds—that is to say, whether they intended to act exclusively under the railroad charter or under authority conferred by a popular vote or under both powers."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

208 The case was submitted to the jury on the 7th day of March, 1888, who afterwards, on the said day, under charge of the court, found the following verdict, viz:

(*General Verdict.*)

NINTH NATIONAL BANK
vs.
KNOX COUNTY, MO. } No. 12.

Verdict.

We, the jury, find for the plaintiff and assess its damages as follows:

On 1st count, in sum of $853.50 on bonds.
On 2nd count, in sum of 5,974.50 on bonds.
On 3rd count, in sum of 5,191.00 on bonds.
On 9th count, in sum of 1,441.44 on coupons.
On 11th count, in sum of $31,835.55 on bonds.
On 12th count, in sum of $2,023.56 on coupons.
On 13th count, in sum of 44.97 on coupons.

R. A. CURTRIGHT, *Foreman.*

First. Were the bonds sued upon in this case issued by the county court of Knox county solely in pursuance of power conferred by the 13th section of the Mo. & Miss. R. R. charter?

Ans. No.

R. A. CURTRIGHT, *Foreman.*

209 Second. In issuing the bonds sued upon did the county court of Knox Co. intend to issue the same pursuant to power conferred by section 17 of the gen. railroad law, in force on May 13th, 1867, and in accordance with a vote of the people of Knox Co. authorizing such issue?

Answer. Yes.

R. A. CURTRIGHT, *Foreman.*

Third. Was an election held in Knox Co., Mo., previous to the issue of the bonds in suit to authorize a subscription of one hundred thousand dollars to the stock of a railroad corporation running on the line of the Mo. & Miss. R. R. as projected?

Answer. Yes.

R. A. CURTRIGHT, *Foreman.*

Fourth. Did two-thirds of the persons voting at such election vote in favor of such subscription & the issuance of bonds to pay for the same?

Answer. Yes.

R. A. CURTRIGHT, *Foreman.*

Afterwards, to wit, on the 8th day of March, 1888 (and within four days after said verdict), the defendant, by its attorney, filed its motion for a new trial, which is in words and figures as follows:

210 *Motion for New Trial.*

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri, November Adjourned Term, 1887.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
vs.
KNOX COUNTY, in the State of Missouri, Defendant.

Now, at this day, comes the defendant and moves the court to make an order to set aside the finding of the jury upon the special issues submitted to it in the above-entitled cause and grant a new trial therein for the following reasons:

1st. The court erred in the admission of evidence on the part of the plaintiff on the trial of said special issues.

2nd. The court erred in excluding evidence offered by the defendant on the trial of said issues.

3rd. The jury found said issues in favor of the plaintiff contrary to the great weight of evidence.

4th. The court erred in refusing to give the instructions and each of them to the jury as requested by the defendant.

5th. The court erred in its charge to the jury.

6th. The jury should have found said special issues and each of them in favor of the defendant instead of the plaintiff.

7th. The jury erred in finding interest on the bonds sued on after their maturity at the rate of seven per cent. per annum, contrary to the contract specified in said bonds, when they should have found interest on said bonds after maturity at the rate of six per cent. per annum.

211 JAMES CARR,
Att'y for Defendant.

Thereupon the court ordered said motion to be continued until the next term of the court.

Afterwards, to wit, on the 8th day of March, 1888 (and within four days after the finding of said verdict), the defendant, by its attorney, filed its motion in arrest of judgment, which is in words and figures as follows:

Motion in Arrest of Judgment.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri, November Adjourned Term, 1887.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
—
KNOX COUNTY, in the State of Missouri, Defendant.

Now, at this day, comes the defendant and moves the *the* court to arrest the entering of judgment on the issues found by the special

verdict of the jury in the above-entitled cause for the following reasons:

1st. Because the plaintiff, by failing to reply and deny the special defence set up in the defendant's answer herein that the subscription of $100,000.00 made by the county court of Knox county on behalf of said county on the 13th day of May, 1867, and the bonds sued on were issued in part payment of said subscription under and by authority of the special act alone under which the Missouri and
Mississippi Railroad Company was incorporated, conclusively
212 admitted said facts to be true, and the special findings of the
jury are repugnant to and contradictory of the facts thus admitted.

2nd. Because the plaintiff, by failing to deny the facts alleged in the special defence set up in defendant's answer herein, conclusively admitted said facts to be true, and the plaintiff was and is thereby estopped from proving any facts contrary to said admitted facts, and said plaintiff should not have been allowed upon the trial to prove any facts contradictory to the facts thus admitted.

JAMES CARR,
Att'y for Defendant.

Thereupon the court ordered said motion to be continued until the next term of the court.

And afterwards, to wit, on the 11th day of September, 1888, and during the May term, 1888, of the court, the court, having duly considered the motion for a new trial, overruled the same.

To this ruling and decision of the court the defendant, by its attorney, then and there duly excepted.

And afterwards, to wit, on the 11th day of September, 1888, and during the May term, 1888, of the court, the court, having duly considered said motion in arrest of judgment, overruled the same.

To this ruling and decision of the court the defendant then and there duly excepted.

The court then made an order granting leave to defendant to file its bill of exceptions herein on the 22nd day of October, 1888, and it then adjourned to that day.

213 And on the 22nd day of October, 1888, and during the
May term, 1888, of the court, by the consent and agreement of all the parties to said case and the order of the court, the time for settling this bill of exceptions was extended until the December term, 1888, of this court, and the defendant was granted the right and privilege of presenting said bill of exceptions to the court and having it settled and allowed at said term, and when so allowed it is to have the same effect as if it had been allowed, signed, and sealed during the May term, 1888, of this court.

And now, on the 3rd day of December, 1888, and during the December term, 1888, the defendant, in pursuance of said agreement and order, presented this bill of exceptions to the court and prayed the court to allow, sign, seal, and make the same a part of the

record in this cause; which is accordingly done on the day last mentioned.

AMOS M. THAYER, *Dist. Judge.* [SEAL.]

Afterwards, to wit, on the 5th day of December, A. D. 1888, and during the regular December term, 1888, of said court, the following proceedings were had in said cause:

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
vs. } 12.
KNOX COUNTY, in the State of Missouri, Defendant.

214 *Application and Order for Writ of Error; Filing of Bond; Approval of Bond & Order for Citation.*

At this day comes the defendant, by its attorney, James Carr, Esq., and submits to the court its application for a writ of error in the above-entitled cause, and the court, having duly considered the same and being fully advised, doth grant said application and allows a writ of error to issue; and now said defendant files bond in the sum of five hundred dollars, with D. A. Ronny, L. F. Cottey, Thomas Burk, T. J. Lycon, C. M. Campbell, Willis Anderson, T. P. Cook, J. S. Anderson, J. H. Baldwin, and Thomas C. Whiteman as securities; and said bond, being duly seen and examined, is by the court approved. It is further ordered that citation issue herein to said plaintiff citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday in October, A. D. 1889, pursuant to writ of error filed in the clerk's office of the circuit court of the United States for the northern division of the eastern judicial district of Missouri to show cause, if any there be, why the judgment rendered against the said defendant in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf; which said bond is in words *in* figures, to wit:

Bond.

Know all men by these presents that D. A. Ronner, L. F. Cottey, Thomas Burk, T. J. Lycon, C. M. Campbell, Willis Anderson,
T. P. Cook, J. S. Anderson, S. H. Baldwin, & Thomas C.
215 Whiteman are held and firmly bound unto the Ninth National Bank of the City of New York in the full and just sum of five hundred dollars, to be paid to the said Ninth National Bank of the City of New York or its assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at the November term, 1887, of the circuit court of the United States for the northern division of the eastern judicial district of Missouri, in a suit depending in said court between The

Ninth National Bank of the City of New York, plaintiff, and Knox County, in the State of Missouri, defendant, judgment was rendered against the said Knox county, and the said Knox county having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Ninth National Bank of the City of New York, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Knox county shall prosecute said writ of error to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

D. A. RONNER. [SEAL.]
L. F. COTTEY. [SEAL.]
THOS. BURK. [SEAL.]
T. J. LYCON. [SEAL.]
C. M. CAMPBELL. [SEAL.]
WILLIS ANDERSON. [SEAL.]
T. P. COOK. [SEAL.]
216 J. S. ANDERSON. [SEAL.]
S. H. BALDWIN. [SEAL.]
THOS. C. WHITEMAN. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Approved by—
AMOS M. THAYER.

For amount stated, $500.

STATE OF MISSOURI, } ss:
County of Knox, }

I, Frank M. Miller, clerk of the county court of Knox county, Missouri, do hereby certify that I am acquainted with the obligors in the above bond, and that they are solvent and responsible for a much larger amount than the sum named in said bond.

Witness my hand as clerk and the seal of said county court this 31st day of October, 1888.

[SEAL.]

F. M. MILLER,
Clerk Knox County Court.

Endorsed: No. 12. United States circuit court, eastern division of the eastern judicial district of Missouri. Ninth National Bank of New York City *vs.* Knox County, in the State of Missouri. Bond, $500.00. Filed 5th day of Dec'r, 1888. Geo. C. Moore, clerk.

217 UNITED STATES OF AMERICA, }
Northern Division of the Eastern Judicial } ss:
District of Missouri, }

I, George C. Moore, clerk of the circuit court of the United States in and for the northern division of the eastern judicial district of Missouri,

do hereby certify the writing hereto attached to be a full, true, and complete transcript of all the record and proceedings had in case No. 12, of Ninth National Bank of New York, plaintiff, against Knox County, in the State of Missouri, defendant, in accordance with the writ of error hereto attached, including bill of exceptions and all documents called for therein, as fully as the same remains on file and of record in said case in my office.

Seal of the United States Circuit Court, Northern Division of the Eastern Judicial District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Hannibal, in the northern division of said district, this 31st day of July, in the year of our Lord eighteen hundred and eighty-nine.

GEO. C. MOORE,
Clerk of said Court,
By —— ——, *Deputy.*

218 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern division of the eastern judicial district of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November term, 1887, thereof, between Ninth National Bank of the City of New York, plaintiff, and Knox County, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said Knox County, in the State of Missouri, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the United States Circuit Court, Northern Division of the Eastern Judicial District of Missouri.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fifth day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

Issued at office, in the city of Hannibal, with the seal of the circuit court of the United States for the north-

ern division of the eastern judicial district of Missouri. Dated as aforesaid.

GEO. C. MOORE,
Clerk Circuit Court United States, Northern Division of the Eastern Judicial District of Missouri.

Allowed by—
AMOS M. THAYER,
District Judge.

219 [Endorsed:] No. 12. United States circuit court, northern division of the eastern judicial district of Missouri. Knox County, in the State of Missouri, *vs.* Ninth National Bank of the City of New York. Writ of error to the circuit court of the United States, northern division, east. jud. dist. of Missouri.

Return to Writ.

UNITED STATES OF AMERICA,
Northern Division of the Eastern Judicial District of Missouri, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of Hannibal, this 31st day of July, A. D. 1889.

{ Seal of the United States Circuit Court, Northern Division of the Eastern Judicial District of Missouri. }

GEO. C. MOORE,
Clerk of said Court.

220 The United States of America to Ninth National Bank of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern division of the eastern judicial district of Missouri, wherein Knox County, in the State of Missouri, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Amos M. Thayer, judge of the circuit court of the United States for the eastern district of Missouri, this fifth day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

AMOS M. THAYER,
Judge United States Dist. Court, Eastern District of Missouri.

I acknowledge service of the above notice on Febr'y 16, 1889.
J. B. HENDERSON, *Att'y.*

221 [Endorsed:] United States circuit court, northern division of the eastern judicial district of Missouri. Knox County, in the State of Missouri, *vs.* Ninth National Bank of the City of New York. Citation. Filed Ap'l 9th, 1889. Geo. C. Moore, clerk.

Endorsed on cover: Case No. 13,620. E. Missouri C. C. U. S. No. 406. Knox County, in the State of Missouri, plaintiff in error, *vs.* The Ninth National Bank of the City of New York. Filed August 29, 1889.

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CLERK.

RECORD, CASE No. 13620.

Supreme Court of the United States.

OCTOBER TERM, 1892.

TERM NO. 78.

KNOX COUNTY, STATE OF MISSOURI,
PLAINTIFF IN ERROR,

vs.

THE NINTH NATIONAL BANK OF THE CITY OF NEW YORK,
DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Statement and Brief of Plaintiff in Error.

B. R. DYSART & R. G. MITCHELL,
Attorneys for Plaintiff in Error.

MACON, MO.:
TIMES POWER PRINT,
1892.

I acknowledge service of the above notice on Febr'y 16, 1889.
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STATEMENT.

This action was commenced in the Circuit Court of the United States for the eastern district of Missouri, on June 14, 1884, and is founded upon a number of bonds and coupons

issued by Knox county, the plaintiff in error, to the Missouri and Mississippi Railroad Company, a corporation under and pursuant to the laws of the State of Missouri.

The amended petition on which the cause was tried alleges that plaintiff is the holder and bearer of said bonds for value and contains among other things the following averments:

"The plaintiff further says that all of said bonds and coupons hereinbefore described in the petition were issued and negotiated by the defendant county to the Missouri and Mississippi Railroad Company or bearer as stated, and that said company was incorporated by a special act of the General Assembly of Missouri as hereinbefore stated, which said company was at the time of the subscription of said stock by said company, and at the time of the issue of bonds and coupons herein described, authorized and empowered by the terms of its charter to build, construct and operate a railroad from the town of Alexandria, in Clark county, Missouri, through the county of Knox, and through the town of Edina, the county seat of said county, to some point on the Missouri river, and connecting with the North Missouri Railroad, which said railroad so authorized would run from Alexandria aforesaid in a southwest course through said town of Edina, and through said county of Knox, to a point on the Missouri river, and would intersect the North Missouri Railroad at or near Macon City, Missouri; the plaintiff further avers that all of said bonds and coupons were authorized, issued and negotiated by said defendant county under and by authority of orders of the County Court of said county, duly entered on the records of said court, and under and by authority of a special election of the qualified voters of said Knox county, duly ordered and held under and according to the laws of Missouri, in said county, on the 12th day of March, 1867, at which election 510 votes were duly and legally cast in favor of making subscription to the said company and of issuing therefor the bonds

herein described, and only 98 votes were cast against said subscription and issue of bonds. Wherefore plaintiff says that at said election so called and held in said county according to law, more than two-thirds of the qualified voters of said county assented to and authorized the said subscription of stock being in the sum of $100,000, for the payment of which the bonds and coupons hereinbefore named were issued and negotiated, and said subscription and issue of bonds were made by said County Court by virtue of said authority; and plaintiff further avers that from the year 1867 to the year 1874 and both inclusive, the defendant county caused to be levied and collected thereon a tax sufficient to fully pay the interest on all the said bonds issued by virtue of said subscription, and during the said period and thereafter, while said bonds and coupons were passing for full value into the hands of purchasers in the open market, the County Court of said county and the people thereof admitted and declared by various and divers acts, both by record and *in pais*, that said subscription and issue of bonds were authorized and made by authority of said election. Wherefore plaintiff says that defendant is now estopped from declaring or avering to the contrary. Therefore plaintiff comes as already prayed and again prays that a judgment be rendered in its favor for the amount of said bonds and coupons, with interest at 7 per cent. thereon, and for its damages and costs, and that it be awarded a mandamus for the full collection of such judgment and costs as provided by law."

The defendant county by its answer to the amended petition admitted the issue and delivery of bonds to the Missouri and Mississippi Railroad Company, amounting to $100,000, in payment for a subscription to the stock of said railroad company, which railroad company was incorporated by its special act of the General Assembly of the State of Missouri, entitled "An Act to Incorporate the Missouri and Mississippi Railroad Company; approved February 20, 1865," but expressly de-

nies that said bonds, or any of them, were issued in compliance with the vote of the people of said county as alleged in the petition.

The answer of defendant contains these further denials and averments:

"Defendant denies that it has voted on the certificate of stock as alleged. Defendant also denies that in each year and from year to year since the date of said bonds, it has caused the necessary taxes to be collected in said county to pay the coupons or said bond or on all or any other bonds of the same issue as alleged in said petition. It denies that it has collected any taxes to pay the coupons on said bond, or any of said coupons, or any other bonds of the same issue, except a special tax of one-twentieth of one per cent. as authorized by said special act under which said Missouri and Mississippi Railroad Company was incorporated as alleged in said count.

"Defendant for answer to each and every other count in said petition denies that the bonds described in said counts or any of them were issued under or by authority of a special election of the qualified voters of Knox county, duly ordered and held or according to the laws of Missouri, in said county, on the 12th day of March, 1867, or at any other time, or that the number of votes alleged was cast in favor of making the subscription described in said counts, or that two-thirds of the qualified voters of said county assented to or authorized the subscription of stock to said company in the sum of $100,000, or any other sum, or that the bonds and coupons described in said count or any of said bonds were issued or negotiated in payment of the subscription described in said counts or any of said counts, or that said subscription and issue of bonds were made by the County Court of Knox county by virtue of the authority alleged in said counts or any of them.

"Defendant denies that the bonds sued on or any of them were issued under or by authority of the assent of two-thirds of

the qualified voters of said county, or that said subscription was made under or by authority of the assent of two-thirds of the qualified voters of said county.

"Defendant denies that the County Court of said county or the people thereof, admitted or declared by various and divers acts, either by record or *in pais*, that said subscription or issue of bonds was authorized or made by authority of the election alleged in said counts or any of them. Defendant denies that any election to obtain the assent of the qualified voters of said county to the subscription described in said counts was ever held.

"And for further defense to each and every count in said petition, defendant states that under and by the authority conferred upon the County Court of Knox county by the 13th section of said special act, in which said Missouri and Mississippi Railroad Company was incorporated, and by no other authority or power, the County Court of Knox county, on the 13th day of May, 1867, upon the petition of said company, made an order authorizing the presiding justice of said court to subscribe for and in the name of the county of Knox, 1,000 shares of stock—i. e., $100,000 in the capital stock of the Missouri and Mississippi Railroad Company, upon the following terms and limitations, namely:

1st. That the sum of one-half of one per cent. of said stock be paid in cash.

2nd. That the remaining ninety-nine and one-half per cent. of said stock be paid in bonds of the county of Knox, bearing 7 per cent. interest per annum and running ten years, with coupons attached, the interest on said bonds payable annually at the treasury of the county of Knox aforesaid, said bonds to be signed by the presiding justice of said County Court, and attested by the clerk thereof.

That in pursuance of said order said presiding justice did on the same day subscribe said $100,000 in the capital

stock of said company, and in payment thereof, on the first day of October, 1867, said county issued to said company bonds of the denomination of $500 and $50 each, to the sum of $——, and on the first day of February, 1868, said county issued additional bonds of the denomination of $500 and $50 each to the sum of $———, making an aggregate sum of $99,500, each bond bearing interest at 7 per cent. per annum, and running ten years from its date, with interest coupons attached thereto, the interest on said bonds payable annually, interest and principal payable at the Bank of Commerce in the city of New York.

Defendant says as to whether the bonds sued on are the same bonds issued by it to said Missouri and Mississippi Railroad Company as aforesaid, it has no knowledge or information sufficient to form a belief.

Defendant for another and further defense to each and every of the bonds sued on, and which bear date October 1st, 1867, says that the cause of action thereon did not accrue within ten years before the commencement of this action.

A jury having been duly empaneled and sworn, the court submitted the following special issues to be considered and found by the jury, to-wit:

"1st. Was an election of the people held in Knox county to authorize the subscription of $100,000 to a railroad company running on the line of the Missouri and Mississippi Railroad Company previous to the issue of the bonds sued on?

"2nd. If such an election were held, did two-thirds of the qualified voters voting at said election vote for the issue of said bonds?

"3rd. In issuing the bonds sued on did the County Court of Knox county intend to issue them under the authority of such election?

"4th. Whether such was the intention of the County Court or not, do the facts and circumstances connected with the issue of the bonds, together with the records of the county,

constitute an estoppel such as to prevent the County Court from now denying that an election was held?"

At the trial of said cause the signatures of William F. Plummer, as presiding judge, and James C. Agnew, as clerk, were conceded to be genuine.

The plaintiff next read in evidence one of said bonds, the others being identical in tenor and effect, the only difference being the serial number and amount of bonds:

"Know all Men by These Presents: The County of Knox, State of Missouri, acknowledges itself indebted to the Missouri and Mississippi Railroad Company, (organized by an Act of the General Assembly of the State of Missouri,) or bearer in the sum of $500.00, which said sum the said county promises to pay at the National Bank of Commerce, in the city of New York, on the first day of February, 1878, with interest at 7 per cent. per annum, which interest shall be payable annually on presentation of the coupon hereto annexed at said National Bank of Commerce, in the City of New York, this bond being issued under and pursuant to order of the County Court of Knox County, for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri, entitled: 'An Act to Incorporate the Missouri and Mississippi Railroad Company,' approved Feby. 20, 1865.

"In testimony whereof, the said County of Knox has executed this bond by the presiding justice of the County Court of Knox county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court. This done at the city of Edina, county and state aforesaid, this first day of February, 1868; registered in bond book page 3. "JAMES C. AGNEW,

"W. F. PLUMMER, Clerk.

Presiding Justice of the County Court of Knox County."

Plaintiff then read in evidence Sections 1, 7 and 13, of an act entitled, "An Act to Incorporate the Missouri and Mississippi Railroad Company," approved February 20, 1865, which are as follows:

(Session acts, 1865, page 86.)

SECTION 1. A railroad company is hereby incorporated under the name and style of the Missouri and Mississippi Railroad Company, with a capital stock of $4,000,000, divided into shares of $100 each, the holder of which, their successors and assigns shall constitute a body corporate and politic and by the name aforesaid shall have continued succession; may sue and be sued; plead and be impleaded; defend and be defended against in all courts of this state and elsewhere, and shall be able in law and equity to make and enter into contracts, and become invested with the title to real and personal property, and to sell and convey the same for this purpose and use a common seal, and may make such by-laws, rules and regulations as the directors of said company may ordain and establish from time to time for the purpose of carrying this charter into effect.

"SEC. 7. Said board of directors shall have full power and authority to survey, mark out, locate and construct a rail road from the town of Macon, in the county of Macon, in the state of Missouri, through the town of Edina, in the county of Knox, in said state, and thence to or near the northeast corner of said state, in the direction of Keokuk, in Iowa, or Alexandria, Missouri, and for such purpose may obtain by grant, gift or donation any quantity of land for the purpose of a road-bed, not exceeding 100 feet wide, depots, warehouses, machine shops, water stations and turn-outs, and may select such route as they may think best.

"SEC. 13. It shall be lawful for the corporate authorities of any city or town, the county court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor, and levy a tax to pay the same, not

to exceed one-twentieth of one per cent. upon the assessed value of taxable property for each year."

The whole of said act was considered in evidence.

Chapter 63, of the General Statutes of Missouri of 1866, "Title of Railroad Companies," under which plaintiff contends said bonds were issued, was also considered in evidence.

Sections 17 and 18 of said chapter are as follows: (Gen. Stats. of Mo., 1866, page 338; Wagner's Stats., 1st Vol., 1870, page 305.)

"SECTION 17. It shall be lawful for the county court of any county, the council of any city or the trustees of any incorporated town, to take stock for such county, city or town in or loan the credit thereof, to any railroad company duly organized under this or any other law of the state; provided, that two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein shall assent to such subscription.

"SEC. 18. Upon the making of such subscription by any county court, city or town, as provided for in the previous section, such county, city or town shall thereupon become, like other subscribers to such stock, entitled to the privileges granted and subject to the liabilities imposed by this chapter, or by the charter of the company in which such subscriptions shall be made, and in order to raise funds to pay the installments which may be called for from time to time by the board of directors of such railroad, it shall be the duty of the County Court, or City Council or trustees of such town making such subscription to issue their bonds or levy a special tax upon all property made taxable by law for county purposes, and upon the actual capital that all merchants, grocers and other business men may have invested in business in the county, city or town, to pay such installments, to be kept apart from other funds and appropriated to no other purpose than the payment of such subscription; but the total amount of tax

levied for railroad purposes in any one year, in any county, city or town, shall not exceed 30 per centum of the subscription made by such county, city or town."

It was agreed by the parties that any laws and statutes of the State of Missouri relating to this case may be read by either party without being copied into the record.

It is also admitted that after the publication of the Macon county case, decided by the Supreme Court of Missouri, reported about October, 1867, (41 Mo., page 453,) the County Court of Knox county made and entered subsequent orders of court, under which additional bonds were issued without a vote, amounting in all to $84,000, and that the present outstanding bonds of Knox county amounted in all (including the $100,000 issue under order of March 12, 1867,) to $167,300, as shown by the records put in evidence.

The plaintiff then read in evidence an order of the County Court of Knox county made on the 6th day of February, 1867, as follows:

"*ORDER OF COUNTY COURT OF KNOX COUNTY.*

"Now at this day is presented to the court a petition signed by persons asking this court to order an election for the purpose of ascertaining the sense of the qualified voters of Knox county in regard to this court subscribing $100,000 for the purpose of constructing a railroad through Knox county; and the court after hearing said petition read in open court, and being fully advised in the premises, do order an election to be held on the Tuesday after the second Monday in March next, at the various precincts in said Knox county, to ascertain thesense of the people of Knox county, as to whether or no they do authorize the County Court of the county of Knox to subscribe stock to the amount of $100,000 to a railroad company, which may construct a railroad running from West Quincy, in this state, thence west through Knox county to some point on the Mis-

souri river; or in a company which may construct a railroad running from Alexandria, in this state, southwest through Knox county to intersect the North Missouri Railroad at or near Macon City, or in any other railroad company which may duly organize under the laws of this state, and may construct a railroad through Knox county, running through Edina and connecting with the North Missouri Railroad, or running to Quincy, in Illinois, or Macon, Missouri, or any point on the Missouri and Mississippi rivers; the stock to be taken being subject to the condition that it shall be payable in county bonds bearing 7 per cent. interest, and running 10 years, and the further condition that all moneys arising from the sale of said bonds shall be expended in the construction of said railroad within the county of Knox aforesaid; and further ordered that public notice of this order of court be given through the *Missouri Watchman* for five weeks, and by printed hand-bills publicly exposed throughout the county; and further ordered that the ballots be printed or written as follows:

"Shall the court subscribe $100,000.00? Yes.

Same same same No.

Plaintiff then read in evidence the following order of the County Court of Knox county:

"February 8, 1867. It is hereby ordered by the court that the same persons who were appointed judges of the general election in November, 1866, be and are hereby appointed judges of the special election to be held on the Tuesday after the second Monday in March next, (12th inst.) for the purpose of ascertaining the sense of the citizens of Knox county as to this court subscribing for Knox county $100,000 in a railroad, Co., for building a railroad through Knox county. Ordered that certificates of appointment be issued by the clerk to said judges under the seal of this court, and further ordered that the clerk make out poll-books for the several precincts in Knox county

and deliver them to the sheriff of the county for distribution."

Plaintiff then read in evidence another order of the County Court of Knox county, made and entered of record on the 4th day of March, 1867, in words and figures following, to-wit:

"*ORDER OF KNOX COUNTY COURT, MARCH 4, 1867.*

"Now at this day it is ordered by the court that the order made heretofore, to-wit, on the 6th day of February, 1867, in regard to the County Court subscribing stock to the amount of $100,000 to some railroad company who may construct a railroad through Knox county, be amended so as to read as follows, to-wit:

"'The order of this court made on the 6th day of February, 1867, ordering an election to be held at the various election precincts in Knox county on the Tuesday following the second Monday in March, 1867, for the purpose of determining as to whether or no the County Court should be authorized to subscribe $100.000 to some railroad company which might construct a railroad running through Knox county, is hereby amended so as to read as follows: It is hereby ordered by the County Court of Knox County that an election ~~to~~ be held at the various election precincts in Knox Connty on the Tuesday after the second Monday of March, 1867, to ascertain the sense of the qualified voters of said county as to whether or not they do authorize the County Court of said Knox county to subscribe stock to the amount of $100.000 in any railroad company which may construct a rail road running from West Quincy, in this state, thence west through Knox county, and running through Edina, the county seat of said Knox county, to some point on the Missouri river; or in a company which may construct a railroad running from Alexandria, in this state, southwest through Knox county, and through Edina, the county seat of said Knox county; thence west so as to intersect the North Missouri railroad

at or near Macon City; or any other railroad company which may be duly organized under the laws of the state, and which may construct a railroad running through Knox county, and through Edina as aforesaid, and connecting with the North Missouri Railroad, or running through Knox county, and through said Edina to Quincy, Illinois, or Macon City, Missouri, or to some point on the Mississippi or Missouri river, the stock to be taken to be subject to the conditions that it shall be payable in county bonds bearing 7 per cent interest, and running 10 years, and that all moneys arising from the sale of said bonds shall be expended in the construction of a railroad within the county of Knox aforesaid; and further ordered by the court that the ballots or tickets voted to be marked as follows, viz:

"Shall the County Subscribe $100,000,00 to the railroad?
Yes.

"Shall the County Subscribe $100,000,00 to the railroad?
No.

"And further ordered by the Court that so much of the former order made by this court February 6, 1867, in relation to said subscription, etc, as conflicts with this order be and the same is hereby revoked."

Plaintiff next offered and read in evidence over the objection of the defendant an entry from the records of Knox county, made on the 18th day of March, 1867, as follows:

"*ENTRY FROM RECORD OF COURT MARCH 18, 1867—IN VACATION.*"

"The clerk of this court in conjunction with Joel Seever and David Bunnell, two justices of the peace within and for the county of Knox on the 18th day of March, 1867, proceeded to count the votes cast at the special election held on the 12th day of

March, 1867, at the various election precincts for the purpose of ascertaining the sense of legal voters of Knox county as to whether the County Court should subscribe $100,000 in a railroad company who would build a railroad through Knox county, and find the vote as follows:

Greensburg twp., for subscription: Yes, 32; no, 11.
Lynn twp., for subscription: Yes, 48; no, 1 vote.
Salt River twp., for subscription: Yes, 31 votes; no, 38 votes.
Jeddo twp., for subscription: Yes, 52; no, none.
Benton twp., for subscription: Yes, 101 votes; no, 4 votes.
Centre twp., for subscription: Yes, 225 votes; no, 7 votes.
Fabius twp., for subscription: Yes, 21 votes; no, 33 votes;

Showing by the votes recorded in the poll-books as counted and received by us that there were cast for subscription of stock by Knox county five hundred and ten votes (510 votes,) and that there were cast against subscription of stock by Knox county ninety-eight (98 votes,) votes.

"We certify the above to be a correct statement of the number of votes cast at the special election for and against the proposition for the County Court of Knox county to subscribe $100,000 for the railroad company.

"Given under our hands the date above written.

"JAMES C. AGNEW, Clerk.
"JOEL SEEVER, J. P.
"DAVID BUNNELL, J. P."

To the reading of this entry defendant objected:

1. Because it is a copy of what purports to have been a certificate given by the clerk of the County Court and two justices of the peace of Knox county of the number of votes cast at the special election held on the first Tuesday after the second Monday of March, 1867, to ascertain the sense of the qualified voters of Knox county upon the proposition to subscribe $100,000 to some railroad, and there is no evidence that the original certificate is either lost, destroyed or cannot be found so as to entitle plaintiff to read said copy in evidence.

2. Because said certificate does not relate to any action or proceeding of the County Court of Knox county, and the clerk thereof had no authority to copy it into the book containing the record of the proceedings of the County Court of said county.

3. Because there is no law authorizing said clerk and justices of the peace to make said certificate, and it is illega and void.

4. Because said certificate is no legal evidence that the County Court of Knox county ever passed upon the validity of said election, and it is irrelevant and incompetent to prove any issue in the case.

Defendant's objections were overruled by the court, and said entry was permitted to be read in evidence, to which ruling of the court the defendant at the time duly excepted.

Plaintiff next read in evidence an order of the County Court of said county made on the 13th day of May, 1867, which is in words and figures following, to-wit:

"*ORDER OF COUNTY COURT, MAY 13, 1867.*

"Now at this day it is ordered by the court that the president justice of this court be and he is hereby authorized to subscribe for and in the name of the county of Knox for the use of the inhabitants thereof, 1,000 shares of stock in the capital stock of the Missouri and Mississippi Railroad Company, upon the following terms and limitations:

"1st. That the sum of one-half of one per cent. of said stock, being one hundred thousand dollars, be paid in cash to defray expense of survey of said road through Knox county; 2nd, That the remaining ninety-nine and one-half per cent, of said stock be issued in bonds of the county of Knox, bearing 7 per eent. interest per annum and running 10 years, with coupons attached, the interest on said bonds payable annually at the treasury of the county of Knox aforesaid; said

bonds to be signed by the president justice of said County Court, attested by the clerk thereof, and made payable to said railroad company upon order of the president and directors thereof, but in no case shall bonds be issued except for work actually done on said railroad within the limits of said Knox county, which amount of work shall in all cases be shown by the estimates of the engineer of said road, verified by his affidavit, which said estimates shall be filed in the office of the clerk of this court."

The plaintiff next read in evidence order of the County Court levying taxes for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874 and 1875, whereby tax levies were made to pay interest on bonds issued by said railroad as follows, ranging from 30 cents on the $100 in 1868 to 75 cents on the $100 in 1874. (See page 30 of printed record in this cause.)

Plaintiff then read in evidence a decision of the Supreme Court of Missouri in the ease of the State ex rel Shortridge et al., delivered in May, 1874, and reported in 56 Mo., page 126, limiting the power of the County Court to a levy of the tax to one-twentieth of our per cent. to pay certain bonds issued by the M. & M. R. R. Co., and it was admitted that the order made on the 23d day of April, 1874, levying 75 cents on the $100 was, on the first day of June, 1874 set aside and a levy of 5 cents on the $100 made to pay said bonds.

Plaintiff next read in evidence, by agreement, the testimony of William F. Plummer, as reported in the case of the United States ex rel George W. Harshman, against the County Court of Knox county, &c., subject to the objections of the defendant as to the competency of said evidence.

The testimony of said W. F. Plummer, is found in the record on page 30 to 35 inclusive. Over the objection of the defendant said W. F. Plummer testified that at the time of the subscription of stock to the Missouri and Mississippi Rail-

road Company in 1867, and at the time of the issue of the bonds in payment of the same, he was presiding justice of the County Court of Knox county, in the state of Missouri. The other judges were Sylvester Schultz and Thomas O. Wamsley. James C. Agnew was clerk. Mr. Schultz is still living. Mr. Wamsley is dead. Mr. Agnew, the clerk, is also dead. He died about 1868 or 1869.

The witness Plummer gave evidence over the objection of the defendant that he believed and understood that the said subscription to the stock of the said railroad company, and the issue of the bonds in payment thereof, was made under the general statutes of the state of Missouri and in pursuance of the vote of the people of said county, held on the Tuesday after the second Monday of March, 1867, as ordered by the court on the 6th day of February, 1867.

The witness Plummer admits that he knew and understood the form of the order of May 13th, 1867, subscribing to the stock of said railroad company; that he also understood the contents and provisions of the bonds issued in payment thereof. He further testifies that the form of the said order and the form of the said bonds were prepared by the county clerk and the county attorney and presented to the court, and the same were adopted by the court; that the court supposed they were all right, and he supposed and believed that they were making said subscription and issuing the said bonds under and pursuant to a vote of the people.

On examination of the order and of the bonds issued in payment of the subscription I discover no mistake made by the court. They both recited what was intended to be recited in them by the court. The forms were prepared and submitted to us by the clerk and the county attorney and we took it for granted they were all right.

The testimony of the witness Plummer was objected to for the reason that his intentions and belief as a county judge at

the time of said order and of the issuance of said bonds cannot be taken to vary or a change the legal effect of said order and of the recitals in said bond; which objection was overruled by the court and the defendant at the time duly excepted.

The plaintiff then read the testimony of Abner L. Gilstrap, whose testimony is reported on pages 50 and 51 of the printed record. He testified that on and prior to the 13th day of May, 1867, he was president of the Missouri and Mississippi Railroad Company. At that time said company was attempting and endeavoring to secure the construction of a line of railroad from Macon City, Macon county, Missouri, through Edina, in Knox county, to Alexandria, in Clark county.

Witness then produced and identified the journal of the proceedings of the board of directors of said company, and read from said journal a resolution of said board adopted at a meeting held on the 13th day of May, 1867, at the said town of Edina, accepting a subscription to the capital stock of said company that day made by said County Court, and also read a resolution of said board appointing himself and two others a committee to draw up forms of certificates to said stock and other instruments to be used by said company, including bonds to be issued by counties subscribing to the said company.

Witness testified that in compliance with said resolution he drew up a form for such bonds; that in the county of Macon where he himself resided a subscription payable in bonds had already been made by the County Court of said county without taking a vote of the people; that he drew up a form applicable to that case; that he sent this form to all the counties which were subscribing to his company, including Knox, and that the bonds before the court in this case are in the form drawn by him.

A bond of the county of Macon being produced in evidence was found to be *mutatis mutandis*, the same form as those of Knox. They both bore the stamp of the same lithographer

"A. Gast & Co., St. Louis," and the position of the words and other marks on the bonds indicated that they were both printed on the same stone. Witness was of opinion at the time this subscription was made that the County Court had power to subscribe under the charter without a vote of the people.

Plaimtiff then swore GRIFFIN FROST who testified as follows:

I am the editor and publisher of the *Knox County Democrat*, and have been for 14 years. I was the editor and publisher of the paper when the statement of the bonded indebtedness of Knox county was published. Said statement was partially published in the number of the paper issued July 31, 1879. It was continued in the number issued August 7, and completed August 21, 1879. The part of the statement relating to the issue of M. & M. bonds is contained in the first column of that part of the said statement published in the paper issued July 31, 1879. This statement was brought to the office by Frank P. Hall, the county clerk, I think, for publication. I don't know what has become of the copy from which this statement was copied. I published said statement under a contract I had with the County Court to publish the statement of the financial condition of Knox county. The court on the 27th of August, 1879, authorized warrants to be drawn for the amount of my bill, $59.20, for publishing said statement.

The plaintiff then offered to read in evidence said statement of the bonded indebtedness of Knox county as published in the *Knox County Democrat*, July 31, 1879. The statement as contained in said paper was read over the objection of the defendant, and is contained in printed record on pages 52 to 55 inclusive. Said statement is in substance as follows:

"Bonded indebtedness of Knox county on account of the subscription to the M. & M. R. R. Co., with the amount of tax levied and collected, and the receipts and expenditures from

May 13, 1867, to June 10, 1879. Under act of the General Assembly, approved February 29, 1875, (February 20, 1865,) an election was held March 12, 1867, upon the proposition to subscribe $100,000 to the M. & M. R. R. Co., which resulted in 510 votes for and 98 votes against said subscription. In pursuance of said election an order of the County Court was made May 13, 1867, subscribing to said R. R. Co. $100,000 in 7 per cent. 10-year bonds at par for work done in Knox county on the sworn estimate of the engineers of said road. Under special act of the legislature incorporating said road the County Courts were authorized to make such subscription as they might deem advisable. Under this provision on the 6th day of September, 1869, an additional subscription was made on the same terms as above for $30,000. On the same day an additional subscription was made by said court for $100,000 in 7 per cent. 20-year bonds at par, interest payable semi-annually; $50,000 when said road-bed is completed and ready for the iron from Clark City, in Clark county, to Edina, and $50,000 when the cars are running on said road from said Clark City to Edina. On the second day of May, 1870, an order was entered of record authorizing the president justice of the Couty Court to subscribe $55,000 additional to complete the grade, bridges and tieing of the first division of said road, payable in 7 per cent. 10-year bonds at par, for work in Knox county, upon the engineer's ~~estate~~ duly sworn to.

On the 20th day of December, 1870 100 $1,000 bonds were issued payable February 1st, 1891, with interest at 7 per cent., payable semi-annually at the Bank of Commerce, City of New York, but no interest to run until delivered to the M. &. M. R. R. Co. These bonds were delivered to P. B. Linville, trustee, by T. O.Wamsley, president justice, under order of the County Court, Vol. 3, page 636.

All of these bonds were afterwards delivered to the County Court by P. B. Linville, and were publicly destroyed.

Of the first subscription there was issued $112,500, of which there is now outstanding $100,000.

Of the second subsciption there was issued $19,100, of which there is now outstanding $14,300.

Of the fourth subscription there was issued $53,000, all of which is now outstanding, making total outstanding bonds $167,300, of which $6,600 is outstanding warrants on the M. & M. R. R. fund which have been substituted for that amount of bonds. Warrants have also been issued on said bonds for $1,094.35, being for interest on bonds thus cancelled. Warrants were also issued March 15, 1879, in favor of G. W. Harshman on the county revenue or general expenditure fund, aggregating $10,136,74, in payment of judgments obtained in the United States Circuit Court for accrued interest on the M. & M. R. R. bonds.

The present condition of the indebtedness of the county on account of subscription to the M. & M. R. R. is as follows:

Total subscription	$184,600 00
Total amount of bonds paid	17,300 00
Bonds outstanding unpaid	160,700 00
Warrants unpaid substituted for bonds	6,600 00
Unpaid coupons outstanding	49,863 26
Warrants unpaid substituted for coupons	11,231 09
Total outstanding indebtedness	$228,394 35

Then follows a summary for the several years not necessary to be stated.

The defendant objected to the reading of said statement in evidence for the following reasons:

1st. Because said statement was not made out by the County Court of Knox county as required by the statutes of the state of Missouri in such cases made and provided.

2d. Because there is no record of said statement either

among the proceedings of the County Court of Knox county as kept in the book containing the record of its proceedings, nor is there any statement on file in the office of the clerk of the court from which the statement in question is copied.

3d. Because the clerk of said county court had no authority from said county to make such a statement, and there is no law authorizing him to make it on his own motion.

4th. Because the clerk cannot by his statement made 12 years after the contract which resulted in making the subscription and issuing the bonds in question, create a liability on the defendant other or greater than the liability created by the contract itself when it was made.

5th. Because the defendant is not and cannot be bound by the unauthorized ex parte statement of the clerk contained in the statement in question, and said statement is irrelavant and incompetent to prove the issues on the part of the plaintiff in this case.

6th. Because said statement is contradictory of the order of the County Court making the subscription under which the bonds sued on were issued, and it is also contradictory to the recital in said bonds.

The court overruled said objections, and allowed said statement to be read in evidence. To this ruling of the court the defendant then and there duly excepted.

The plaintiff then offered to read in evidence over the objection of the defendant an order of the Knox County Court made on the 27th day of August, 1879, allowing the account of Griffin Frost for publishing the statement of county finances aforesaid.

Defendant objected to the reading of said order in evidence for the following reason:

Because no order or action of the County Court made 12 years after the order of the County Court authorizing the subscription to be made can create an obligation on defendant

other or different from the obligation ~~created~~ created by the order authorizing the subscription to be made, and said order is irrelevant and incompetent to prove any issue in this case.

The court overruled said objection and allowed said order to be read in evidence. To thus ruling of the court the defendant then and there duly excepted.

The plaintiff then offered to read and over the objection of the defendant read in evidence what purported to be a certified copy of "the bond register," kept on file as such in the office of the clerk of the County Court of Knox county, Missouri. Said copy is contained in the printed record on page 59 to 61 inclusive.

Said bond register merely shows the bonded indebtedness of Knox county on the first day of January, 1874. Appended to the same was the following statement:

"One hundred thousand dollars of the bonds issued to the Missouri and Mississippi Railroad Company, ordered by an election held the 12th of March, 1867, official return being 510 votes for and 98 against, under an act of the legislature of Missouri entitled "An Act to Incorporate the Missouri and MississippiRailroad Company, approved February 20, 1865.'"

All the bonds issued to the Missouri and Mississippi Railroad Company were issued under the authority of this act. Bonds issued to the Quincy, Missouri and Pacific R. R. were issued under authority of an act to amend an act entitled "An Act to Facilitate the construction of ———— Railroad, in the state of Missouri, approved March 23, 1868," and authorized by a vote of more than two-thirds of the qualified voters of the township elections held as follows:

Jeddo twp., May 31, 1870; 111 votes for; 39 against.

Centre twp., November 30. 1869; 151 votes for; 58 against.

Sub-division No. 2, twp., September 29, 1871, more than two-thirds of votes being for the issue.

The defendant objected to the reading of said document for the following reasons, (meaning the said bond register and the statement appended:)

1. Because said statement is only the unauthorized *ex parte* statement of the clerk, pasted on the fly leaf of said bond register, long after the bonds in question had been issued and recorded in said bond register, and it is not binding on the defendant, and it is irrelevant and incompetent to prove on the part of the plaintiff the issues in this case.

2. Because the clerk had no authority under the law or from the County Court of Knox county to make the statement in question, and said statement is not binding on the defendant.

3. Because said statement is contradictory to the order of the County Court making the subscription under which the bonds sued on were issued, and it is also contradictory to the recitals in said bonds.

4. Because the plaintiff cannot create a liability on the defendant by the unauthorized *ex parte* statement of the clerk of the County Court made years after the contract in question had been made.

The court overruled said objections and allowed the said copy of said statement to be read in evidence.

To this ruling of the court the defendant then and there duly excepted.

And here the plaintiff rested its case.

DEFENDANT'S EVIDENCE.

The defendant to sustain the issues on its part first read in evidence the deposition of Sylvester Schultz. The testimony of this witness begins on page 64 of the printed record and ends on page 104 of said printed record. The witness testified in substance that he was a member of the County Court of Knox county from 1866 to 1869; that he was a member of said court at the time the subscription was made to the capital

stock of the Missouri and Mississippi Railroad Company, and at the time of the issuing of the bonds in payment of the same. That Judge Plummer and Judge Wamsley were the other members of the court at that time.

The witness testified that he recognized and remembered the order made by the County Court of Knox county on the 6th day of February, 1867, and also the amended order made on the 4th day of March, 1867, for a vote of the people of Knox county in reference to taking stock in some railroad company passing through said Knox county. In 1867 at the time of the said vote Knox county had a registered list of the qualified voters of the said county. I have recently examined in the office of the county clerk for said list and inquired for the same and it could not be found. I have hunted for the same recently. It was in the custody of the county clerk of said court. I have made diligent search for the same and it cannot be found. I saw it in the year 1867 about the time the vote was taken. I know there was such a list in 1867. I cannot say what the exact number was, but I know that it exceeded one thousand qualified voters. I can safely say it exceeded one thousand. When the election was held there was 510 for and 98 against. After the vote was taken and reported to the court we had doubts about the legality of the vote. The matter was discussed and talked over between the members of the court. We had doubts whether we could make the subscription and issue the bonds under the vote. Colonel Gilstrap, the president of the railroad company, and General Jones, one of the directors, came before the court and insisted that the vote was illegal and that we had no authority to make the subscription and issue the bonds under the vote, and the president and other officers of the company told the court that they would refuse to accept of bonds issued under and pursuant to the said vote. They said it would not be legal, and they futher argued with the court and insisted that the court had a right to sub-

scribe for the stock and issue the bonds under and pursuant to the act incorporating the Missouri and Mississippi Railroad Company without a vote, and that they would accept the bonds issued under said act without a vote, but would not accept bonds issued under the general *law* pursuant to the vote, and thereupon the County Court of Knox county concluded to ignore the election and not to issue bonds under and pursuant to the said election, but under and pursuant to the act of 1865 incorporating the Missouri and Mississippi Railroad Company,

Among the objections occuring to the court and presented by the officers of the railroad company to the election held, were the following:

1. That no particular road was voted for.

2. That two-thirds of all the qualified voters had not voted for the proposition.

3. That the notice of said election was not legal and sufficient.

The witness further testified that the form for the order of the subscription to the stock of said railroad company and the form of the bonds issued in payment therefor were both prepared by the officers of the said railroad company and submitted to the court. The form of the bond was represented to be the same as that issued by Macon county to the same company. It was represented by the officers of the railroad company that Macon county had subscribed to said stock and issued bonds in payment thereof without a vote, and that the form of the bond submitted was exactly the same as the Macon county bond with the name of Knox county inserted instead of Macon.

The recital in the bonds that ~~first~~ they were issued "as authorized by an act of the General Assembly of the state of Missouri entitled 'An Act to Incorporate the Missouri and Mississippi Railroad Company, approved February 20 20, 1865,'" is exactly what we meant, and the said

bonds were issued under said act and under no other authority.

The defendant further to sustain the issues on its part swore ABNER L. GILSTRAP, whose testimony is contained in the printed record on page 104 to 109 inclusive. On the direct examination the witness testified as follows:

I reside in Macon City, Missouri. I am an attorney and have been practicing law for over 40 years. I was appointed by the charter of the M. & M. R. R. Co. a director, and I helped to organize the company in 1866. I was chosen by the board of directors president of the company, and was president for a year and perhaps longer from the time the company was organized. I was a director and president on the 13th day of May, 1867, when the County Court of Knox county subscribed $100,000 to the capital stock of the M. & M. R. R. Co A few days before the 13th day of May, 1867, the directors met in Macon City, Missouri, and determined to meet in Edina, the county seat of Knox county, Missouri, on the 13 thday of May, 1867. On the morning of the 13th day of May, 1867, the directors of the M. & M. R. R. Co. met and held a meeting in Edina for the purpose of obtaining a subscription to the capital stock of the M. & M. R. R. Co. At this meeting Judge E. N. Wilson and other members of the board living in Knox county informed the directors that a special election had been held on the 13th day of March, 1867, to ascertain the sense of the qualified voters in Knox county, whether they would assent to the making of a subscription of $100,000 on behalf of Knox county to some railroad running through the county. The Knox county members of the board told us all about the orders of the County Court for holding the election, and the total number of qualified voters on the registration lists of the county, the number of votes cast for and against assenting to the subscription, and we learned that no notice of the order of the County Court made on the 4th day of March, 1867, modifying

he original order, had ever been given. I think I examined the orders of the County Court for myself. My opinion was that the election held on the 12th day of March, 1867, was not legal. General Jones concurred with me in this opinion. So did Judge Wilson. Several members of the board were opposed to raising any subscription under that election from the county on account of its illegality. It was my opinion that the County Court had full power under the charter of the M. & M. R. R. Co. to subscribe any amount it saw proper without any election or vote of the people,

I was a member of the Constitutional Convention which adopted the Drake Constitution,—a constitution of the state which went into operation the 4th day of July, 1865. Judge E. N. Wilson was state senator from the Knox county district when the charter of the M. & M. R. R. Co. was granted. He drew the charter, all except the 13th section. He wrote from Jefferson City to me at St. Louis, where I was attending the Constitutional Convention, to come up to Jefferson City and assist him in drawing the charter. I went up and he showed me what he had done, and requested me to draw the 13th section. I worked at it until 12 o'clock that night, when I got it drawn in the shape it passed, and then I handed it to Wilson. He read it over carefully and, after reflecting, said that would do and he reported the bill in that shape, and it passed just as it had been drawn and reported.

I predicated my opinion that the election held on the 12th day of March, 1867, was illegal on the facts as stated by Judge Wilson and the other members of the board living in Knox county. In my opinion that election was illegal in the following particulars: 1. The proposition submitted to the vorers embraced three different railroads to be voted for and the ballot as cast did not designate which one of them the voter voted in favor of the county subscribing to. 2. There were twelve hundred or upwards of qualified voters on the registration lists of the

county and two-thirds of all voters on the list had not voted at said election. 3. No notice had been given of the election held under the modified order of March 4, 1867.

General Jones and Judge Wilson were of the same opinion as I was. We three went before the County Court in the forenoon and made speeches to it, requesting it to subscribe $100,000 to the capital stock of the M & M. R. R. Co. under the charter alone, and we gave it as our opinion that the court had full power to subscribe under the charter without any vote. We asked the court to ignore the vote cast at the special election held on the 12th day of March preceding. We said that election was illegal in the particulars stated, and that we would not accept a subscription made under that election.

General Jones is dead. Judge Wilson is dead and Col onel Wirt is dead.

In the afternoon of that day the County Court subscribed $100,000 to the capital stock of the M. & M. R. R. Co. The order authorizing the presiding judge to make the subscription was shown to the directors of the company. We held another meeting of the directors in the afternoon and passed a resolution accepting the subscription. The directors at the meeting in the afternoon appointed a committee of three to prepare a form of bonds to be issued in payment of subscription. I was chairman of that committee and prepared the form of the bonds. It is the same as the form of the bonds issued by Macon county. The only change made from the form of the Macon county bonds was to make the bonds suit Knox county. Macon county had subscribed $175,000 to the M. & M. R. R. Co. about five weeks before that under the charter without any vote. I drew the form of the bonds issued by Macon county. The following recital in one of the bonds sued on was read to the witness, namely:

"This bond being issued under and pursuant to order of the County Court of Knox county for subscription to the stock

of the Missouri and Mississippi railroad company as authorized by an act of the General Assembly of the state of Missouri, entitled, 'An Act to Incorporate the Missouri and Mississippi railroad Company, approved February 20, 1865.'"

Question: Did you intend to put that recital in the bond?

Answer: I intended precisely what the bond expressed.

PHILLIP B. LINVILLE was sworn on the part of the defendant. His evidence is contained in printed record on page 109 to 111 inclusive. This witness testified in substance:

I live in Edina, Knox county, Missouri; have lived there since 1844; am engaged in the banking business. I was present in the court room of the County Court of Knox county Mo., when some of the directors of the M. & M. R. R. Co. applied to the County Court to subscribe to the M. & M. R. R. Co. Col. Abner L. Gilstrap requested the County Court to subscribe under the charter of the railroad company without any vote. So did General Jones. They both made speeches to the court. I heard their speeches. They said the County Court had full power to subscribe under the charter without any vote of the people, and they asked the court to subscribe under the charter of the company. They gave it as their opinion that the special election which had been held in March preceding was illegal because two-thirds of all the qualified voters in the county had not voted at that election in favor of the proposition to subscribe. They wanted the bonds issued under the charter of the railroad Co. Col. Gilstrap read the 13th section of the charter, and then said the County Court had full power under it to subscribe and to issue bonds under that section without any vote, and it would not be legal to make the subscription and issue the bonds under the vote which had been given on the 12th of March, 1867.

The speeches of Gilstrap and Jones giving their reasons for objecting to the subscription being made under the vote were much fuller than I have stated. I think they stated other rea-

sons for objecting to the subscription made under the vote, which I do not now call to mind. Colonel Gilstrap told the court to pay no attention to the vote, but to go on and issue the bonds under the charter of the M. & M. R. R. Co. Colonel Wirt was director from Knox county. He made a speech urgingthe County Court to subscribe under the charter of the M. & M. R. R. Co., saying to the court that he thought the vote illegal and gave his reasons why. General Jones was a lawyer at Macon City and his reputation was that of a good lawyer. He stood high. So did Colonel Gilstrap. General Jones and Colonel Wirt are both dead. Objection was made to the form of the ballot. The proposition submitted three railroads and the ballot did not designate which one of the three.

JACOB PUGH was sworn on the part of the defendant. His testimony is contained in the printed record on pages 111 to 113 inclusive. The witness testified that he had lived in Edina, Knox county, Missouri, for 40 years. I remember the day the directors of the M. & M. R. R. Co. met in Edina, and made speeches to the County Court of Knox county in regard to subscribing to the capital stock of the M. & M. R. R. Co. I was in the court room most of the time during their speeches to the County Court. Abner L. Gilstrap said to the County Court that it had the authority under the charter of the M. & M. R. R. Co. to subscribe to its capital stock and to issue bonds in payment thereof without any vote of the people. I also heard Colonel Gilstrap tell the County Court that it had no authority to subscribe or issue bonds under the vote which had been taken on the 12th day of March preceding. That election was illegal, and he stated wherein it was illegal. I was one of the registration officers of Knox county in 1866 and helped to register the voters of the county. A regular registration book was made out for each township in the county and

filed in the county clerk's office. After the townships had all been registered by the township officers, the registration officers for all the townships met at the Court House and formed a kind of court of appeals, to which any person thinking himself aggrieved by not being registered as a qualified voter, could appear and have his case reviewed. I was a member of this board of review and had occasion to examine the registration books. I have looked for them frequently in every part of the county clerk's office where they were likely to be found, and I could not find them. I have not seen them since 1869. The county clerk was the legal custodian of them. I knew there were between twelve hundred and thirteen hundred names of voters on the registration list. Colonel Gilstrap and General Jones both said the special election was illegal because two-thirds of all the qualified voters in the county had not voted at said election for the subscription. Another objection was there was no notice given of the election to be held under the modified order of the County Court made on the 4th day of March, 1867. And another objection was that the order submitting the question to the voters didn't specify which one of these railroads the voters voted in favor of making the subscription to, or, in other words, the proposition as submitted to the voters was too indefinite. Both Gilstrap and Jones requested the County Court to subscribe under the charter of the M. & M. R. R. Co. alone and to ignore the vote given at the special election on account of its illegality.

FRANK M. MILLER was sworn on the part of the defendant. His testimony is contained in printed record, page 113 to 114 inclusive. The witness testified as follows:

I reside in Edina, Knox county, Missouri, and am clerk of the County Court of Knox county. The statement of the bonded indebtedness of Knox county, published in the *Knox County Democrat* July 31, 1879, August 7, 1879, and August

21, 1879, and read in evidence by plaintiff, is not on the records of the County Court of Knox county, nor is it on file in the county clerk's office. At least, I cannot find it. The paper read in evidence, showing $100,000 of the bonds of Knox county to have been issued under a vote of the people held March 12, 1867, is in the handwriting of Samuel Ennis, who was clerk of the County Court of said county from January, 1875, to January, 1879, and again from January, 1883, to March, 1887, and Frank P. Hall was clerk from January, 1879, to January, 1883. It is posted in the front part of the book which contains a list of the bonds issued by Knox county, their dates, denominations, &c. It is not written on one of the original leaves in the book, but has been pasted in it. This book is known as the "Bond Register of Knox county."

And here defendant rested.

The defendant then asked the court to give the following instructions to the jury:

DEFENDANT'S REFUSED INSTRUCTIONS.

The court instructs the jury that the ballot cast at the special election held on the 12th day of March, 1867, did not designate which one of the three railroads or railroad companies it was cast in favor of; that the county court of Knox county could not determine from said ballot to which one of said railroads or railroad companies it should make the subscription in question; that said ballot was void for uncertainty, and the said county could not legally act under it as authority to make said subscription.

If the jury believe from the evidence that the subscription in question was not made under and by authority of the special election held on the 12th day of March, 1867, then the county of Knox cannot be estopped by the statement or statements of the county clerk read in evidence or the act of the county court

in payment for the publication of said statement or statements.

If the jury believe from the evidence that the justices who composed the Knox county court at the time of making the subscription in question discussed among themselves whether said special election had been held in conformity to law and were not satisfied that it had, then they will find that said subscription was not made nor the bonds with the coupons sued on issued under and by authority of said election.

The court further instructs the jury that the county court was the proper tribunal to pass upon and decide whether the special election held on the 12th day—March, 1867, was held in conformity to law. Now, if the jury believe from the evidence that the county court did not pass upon and decide that said election was held in conformity to law, then they will find that the subscription in question was not made nor the bonds with the coupons sued on issued under and by authority of said special election.

The court further instructs the jury that the county court of Knox county is and was at the time of the making of the subscription in question a court of record; that whatever action it took in regard to passing upon and determining whether the special elecection held on the 12th day of March, 1867, for the purpose of taking the sense of the qualified voters of said county as to whether the county court should make said subscription or not can only be shown by the record of said court, and in this case there is no evidence that said court ever passed upon and determined whether said special election was held in conformity to law or not.

The court instructs the jury that there were two laws in force under which the County Court of Knox county was authorized to subscribe the one hundred thousand dollars in question to the capital stock of the M. & M. Railroad Company at the time when such subscription was made. The one was

the act of the General Assembly of the State of Missouri, under which said railroad company was incorporated, entitled "An act to incorporate the M. & M. Railroad Company," approved February 20th, 1865, and the other was the authority conferred by the general statutes of 1866. Under said act of February 20th, 1865, the County Court had full authority to make said subscription without the assent of two-thirds of the qualified voters of said county, and under the general statutes of 1866 the County Court had no authority to make such subscription without the assent of two-thirds of the qualified voters of said county given at an election held for the purpose of obtaining such assent. The issue in this case is whether the subscription in question was made by said County Court under special act or under the general law. The plaintiff alleges that said subscription was made and the bonds with coupons sued on were issued by said County Court under and pursuant to a special election held in said county on the 12th day of March, 1867, under an order of said County Court made on the 4th day of March, 1867, whereat two-thirds of the qualified voters of said county voted in favor of and assented to the making of subscription. This allegation is denied by the defendant, and it alleges that said subscription was made and by authority of said special act alone and the bonds with the coupons sued on issued in part payment of said subscription. The bonds have this recital on their faces, viz: "These bonds were issued under and pursuant to an order of the County Court of Knox county for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by the act of the General Assembly of the State of Missouri entitled 'An act to incorporate the Missouri and Mississippi Railroad Company,' approved February 20th, 1855," The court instructs the jury that the burden of proof is on the plaintiff to prove its said allegation; that to overcome said recital in the bonds the plaintiff must prove by clear, positive, full, and explicit evidence

that said recital was put into said bonds by mistake. Now, if the jury believe from the evidence that said Courty Court made said subscription under and by authority of said special act and issued said bonds with coupons in part pryment thereof, then they will find for defendant.

If the jury believe from the evidence that the cause of action on the bonds dated October, 1867, accrued more than ten years before the commencement of the suit, they will find for the defendant as to such bonds.

The court refused to give said instructions and each of them, and defendant at the time duly excepted.

The court charged the jury as follows:

CHARGE TO THE JURY.

Thayer, D. J.:

Gentlemen of the jury: The case which you are to determine (as you are aware) is an action on certain bonds and coupons issued by Knox county,

It stands admitted that the bonds and coupons in suit were executed and put in circulation by Knox county, so that you will take that fact as conceded.

The controversy, so far as you are concerned, arises over the question whether the bonds in suit were issued in pursuance of a power conferred on the county by the 13th section of the charter of the Missouri & Mississippi R. R. Co. or by virtue of the 17th section of the general railroad law of the State which was in force on May 13th, 1867, the day the county court ordered the issuance of the bonds.

I will read you the two sections last referred to. Section 13 of the railroad charter is as follows: "It shall be lawful for the corporate authorities of any city or town, the county court of any county desiring to do so, to subscribe to the capital stock of said company, and may issue bonds therefor and levy

a tax to pay the same not to exceed 1-20 of 1 per cent. upon the assessed value of the taxable property for each year."

Section 17 of the general railroad law is in the following language: "It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town to take stock for such county, city, or town in or loan the credit thereof to any railroad company duly organized under this or any other law of the State, provided that two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent to such subscription."

You will observe, gentlemen, that here are two different statutes under either one of which or under both the county court of Knox county might lawfully issue bonds in aid of the building of a railroad through the county. Acting under one statute, the county court could issue bonds of its own motion without a popular vote; acting under the other, a vote of the people was necessary to validate the issue.

Now, the main question which you must determine in this case is whether the county court of Knox county issued the bonds in suit pursuant to the power conferred on it by section 13 of the railroad charter and without any reference to a popular vote or whether the court issued the bonds in obedience to a popular vote and because more than two-thirds of those voting on the proposition favored an issuance of bonds.

If the evidence in this case satisfies you that in issuing the bonds now sued on the county court of Knox county intended to and did act solely in pursuance of the power conferred on it by the 13th section of the railroad charter which I have read to you and without reference to any authority conferred by a vote of the people, then you will answer the 1st question submitted to you in the affirmative and you will answer the 2nd question in the negative, and you may in that event answer the

3rd and 4th interrogatories according as you find the fact to be

The questions submitted to you are as follows:

First. Were the bonds sued upon in this case issued by the county court of Knox county solely in pursuance of power conferred by the 13th section of the Missouri and Mississippi Railroad charter?

Second. In issuing the bonds sued upon did the county court of Knox county intend to issue the same pursuant to power conferred by section 17 of the general railroad law in force on May 13th, 1867, and in accordance with a vote of the people of Knox county authorizing such issue?

Third. Was an election held in Knox county, Missouri, previous to the issue of the bonds in suit to authorize a subscription of one hundred thousand dollars to the stock of a railroad corporation running on the line of the Missouri and Mississippi railroad as projected?

Fourth. Did two-thirds of the persons voting at such election vote in favor of such subscription and the issuance of bonds to pay the same?

On the other hand, if you find that the proposition embraced in the two orders of the county court of Knox county of date February 6th, 1867, and March 4th, 1867, was submitted to the voters of the county at an election held for that purpose; that more than two-thirds of those voting at such election voted in favor of the proposition; and if you find that the county court subscribed to stock in the Missouri and Mississippi Railroad Company and issued the bonds in suit in pursuance of power conferred by such vote, and that the projected route of said railroad was on either line or route mentioned in said orders, then you will answer question No. 1 in the negative and questions Nos. 2, 3, and 4 in the affirmative.

In this connection I will further add, gentlemen, that if you find from the evidence that in issuing the bonds in suit the

county court acted both in pursuance of power conferred by the railroad charter in question and also in reliance upon the popular vote previously taken, whereat more than two-thirds of those voting favored a subscription and the issuance of bonds to pay for the same, then and in that event you will answer the first question in the negative and the 2nd, 3rd, and 4th question in the affirmative.

It was competent for the county court to rely and act upon both the power conferred by the railroad charter and upon power derived from the general railroad law and a popular vote taken in pursuance of the same. Such action on the part of the county judge would not be inconsistent. They might well invoke the aid of any and all laws that were supposed to confer power on the county court to make the subscription in question or that might confer such power, and if they did so act with reference to and relying upon both said laws, then, although the judges may have had doubts of the validity of election, the issue of bonds was not made solely under the railroad charter, and you should answer the 1st question in the negative and the 2nd, 3rd and 4th questions in the affirmative, provided it also appears that an election was held as before stated and that more than two-thirds of those voting thereat favored the subscription.

In the course of the trial something has been said respecting the form and validity of the two orders of the county court of Knox county of date February 6th and March 4th, 1867, which have been read in evidence and which provided for the submission of a certain proposition to the voters of Knox county.

With reference to the orders in question I will say that they are good and sufficient in law, although no particular railroad corporation is mentioned in such orders. If a proposition such as is contained in these orders was submitted to a vote of the

people at an election called for that purpose and more than two-thirds of all the persons voting at the election voted in favor of the proposition, then such vote was sufficient in law to authorize the county court to subscribe for stock in the Missouri & Mississippi railroad and to issue the bonds of the county in payment therefor, provided the route of the Missouri and Mississippi railroad passed through Knox county on either line indicated in said order.

That is to say, gentlemen, it was competent for the people of the county to give the county court a general power to subscribe to the stock of any railroad that might construct a railroad through the county on either one of several prescribed routes. It was not necessary that the name of the corporation in which it was proposed to subscribe stock should be specified in the proposition submitted to the voters, and the fact that it was not specified does not impair the validity of the orders, and it does not impair the validity of any action which the county court may have taken on the faith of an election held under the same.

I will futhermore say, gentlemen, that the fact that there were 1,000 registered voters in Knox county when the election was held, and that 510 votes only were cast in favor of issuing bonds did not impair the validity of the election or the bonds. The law only required thattwo-thirds of all who voted at the election should vote in favor of an issue of bonds.

I will also say that the fact that the election took place within less than five weeks after March 4, 1867, when the first order for an election was modified, and that five weeks' notice was not given after that day, did not impair the validity of the election or the bonds; therefore, if you find that in point of fact the county court acted in reliance upon the vote of the people in issuing the bonds, then the validity of the bonds was not affected or impaired by reason of any of the objections

urged by counsel against the validity of the election or against the manner in which the vote was canvassed.

Now, gentlemen, the burden of showing that the county court intended to issue the bonds under authority conferred by a vote of the people or in part reliance thereon rests upon the plaintiff because it has averred that they were so issued, and it is its duty to establish the fact so averred.

In arriving at a conclusion upon the issues submitted to you as to which law the county court intended to act under, you are privileged to consider all the facts and circumstances of the case as developed by the testimony.

You may look at the recital contained in the bonds (which in my opinion is not conclusive on the question at issue), but you will give the recital such weight as you think it deserves.

You will also consider the subsequent action of the county court in the matter of levying more that 1-20 of one per cent. per annum for a period of several years to pay interest on the bonds.

You may also consider any entries or recitals appearing on the bond register of the county with reference to the bonds in suit and any statements which the county court of Knox county caused to be published concerning the bonds.

From all such documents as are in evidence, as well as from the oral testimony, you will determine what was the true intent of the county court in issuing the bonds—that is to say, whether they intended to act exclusively under the railroad charter or under authority conferred by a popular vote or under both powers.

In conclusion, gentlemen, I ask you to take this case and dispose of the issue of fact which I have submitted to you fairly and impartially, without prejudice for or bias against either party. It is your sworn duty as jurors to decide this case with

the same degree of fairness that you would decide a controversy between two private individuals. I have confidence that you will endeavor to determine the issue in the case in the same spirit of fairness and justice to both parties that I feel sure would actuate you if the suit was between two natural persons.

You will return a general verdict in favor of plaintiff on the bonds and coupons, and you will also answer the special issues of fact submitted to you.

The defendant made the following specific objections to the charge of the court:

DEFENDANT'S OBJECTIONS TO CHARGE.

The defendant by its attorney, objected to the following words in said charge, viz.: "Or under both," where they occur between the words "Under either one of which," and "the County Court of Knox county."

The court overruled said objection, and gave said words to the jury as part of its charge.

To the giving of said words as part of said charge the defendant, by its attorney, then and there duly excepted.

The defendant, by its attorney, also objected to the following words in the third interrogatory, which was submitted to the jury in said charge, namely: "A railroad corporation running on the line of the Missouri and Mississippi railroad as projected."

The court overruled said objection and gave said words as part of its charge to the jury.

To the giving of said words as part of said charge the defendant, by its attorney, then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, namely: "On the other hand, if you find that the proposition embraced in the two orders of the County Court of Knox county, of date of February 6, 1867, and March 4, 1867, and submitted to the voters of the county

at an election held for that purpose, that more than two-thirds of all those voting at such election voted in favor of the proposition, and if you find that the County Court subscribed to stock in the Missouri and Mississippi Railroad Company and issued the bonds in suit in pursuance of power conferred by such vote, and that the projected route of said railroad was on either line or route mentioned in said orders, then you will answer question No. 1 in the negative and questions No. 2, 3 and 4 in the affirmative."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, to-wit:

"In this connection I will further add, gentlemen, that if you find from the evidence that in issuing the bonds in suit the County Court acted both in pursuance of power conferred by the railroad charter in question and also in reliance upon a the popular vote previously taken, whereat more than two-thirds of those voting favored a subscription and the issuance of bonds to pay for the same, then and in that event you will answer the first question in the negative and the second, third and fourth questions in the affirmative."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, namely: "It was competent for the County Court to rely and act upon both the power conferred by the railroad charter and upon power derived from the general railroad law and a popular vote taken in pursuance of the same. Such action on the part of the county judges would

not be inconsistent. They might well invoke the aid of any and all laws that were supposed to confer power on the County Court to make the subscription in question or that might confer such power; and if they did so act with reference to and relying upon both said laws, then although the judges may have had doubts of the validity of the election the issue of bonds was not made solely under the railroad charter, and you should answer the first question in the negative and the second, third and fourth questions in the affirmative, provided it also appears that an election was held, as before stated, and that more than two-thirds voting thereat favored the subscription."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, namely: "In the course of the trial something has been said respecting the form and validity of the two orders of the County Court of Knox county of date February 6th and March 4th, 1867, which have been read in evidence, and which provided for the submission of a certain proposition to the voters of Knox county. With reference to the orders in question, I will say that they are good and sufficient in law, although no particular railroad corporation is mentioned in such orders.

"If a proposition such as is contained in these orders was submitted to a vote of the people at an election called for that purpose and more than two-thirds of all the persons voting at the election voted in favor of the proposition, then such vote was sufficient in law to authorize the County Court to subscribe for stock in the Missouri and Mississippi railroad and to issue bonds of the county in payment therefor, provided the route of the Missouri and Mississippi railroad passed through Knox county on either line indicated in said order—that is to say,

gentlemen, it was competent for the people of the county to give the County Court a general power to subscribe to the stock of any railroad that might construct a railroad through the county on either one of the several prescribed routes; it was not necessary that the name of the corporation in which it was proposed to subscribe stock should be specified in the proposition submitted to the voters, and the fact that it was not specified does not impair the validity of the orders, and it does not impair the validity of any action which the County Court may have taken on the faith of an election held under the same."

The court overruled said objection and gave such proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition, in said charge, namely: "I will also say that the fact that the election took place within less than five weeks after March 4th, 1867, when the order for an election was modified, and that five weeks notice was not given after that day, did not impair the validity of the election or of the bonds. Therefore, if you find that in point of fact, the County Court acted in reliance upon the vote of the people in issuing the bonds, then the validity of the bonds was not affected or impaired by reason of any of the objections urged by counsel against the validity of the election or against the manner in which the vote was canvassed."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly axcepted.

The defendant, by its attorney, also objected to the following proposition in said charge, namely: "You may look at the recital contained in the bond, (which, in my opinion, is not

conclusive on the question at issue,) but you will give the recital such weight as you think it deserves."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge: "You will also consider the subsequent action of the County Court in the matter of levying more than one-twentieth of one per cent. per annum for a period of several years to pay interest on the bonds."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, namely:

"You may also consider any entries or recitals appearing on the bond register of the county with reference to the bonds in suit and any statements which the County Court of Knox county caused to be published concerning the bonds."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

The defendant, by its attorney, also objected to the following proposition in said charge, namely:

"From all such documents as are in evidence as well as from the oral testimony you will determine what was the true intent of the County Court in issuing the bonds—that is to say, wheth er they intended to act exclusively under the railroad charter or

under authority confered by a popular vote or under both powers."

The court overruled said objection and gave said proposition as part of its charge to the jury.

To the giving of said proposition as part of said charge the defendant then and there duly excepted.

Under the evidence and the charge of the court the jury found a general verdict for the plaintiff and answered the special issues of facts submitted as follows:

First. Were the bonds sued upon in this case issued by the County Court of Knox county solely in pursuance of power conferred by the 13th section of the Missouri and Mississippi railroad charter?

Answer, No. R. A. CURTRIGHT, Foreman.

Second. In issuing the bonds sued upon did the County Court of Knox county intend to issue the same pursuant to power conferred by section 17 of the general railroad law, in force on May 13, 1867, and in accordance with a vote of the people of Knox county authorfzing such issue?

Answer, Yes. R. A. CURTRIGHT, Foreman.

Third. Was an election held in Knox county, Missouri, previous to the issue of the bonds in suit to authorize a subscription of $100,000 to the stock of a railroad corporation running on the line of the Missouri and Mississippi railroad as projected?

Answer, Yes. R. A. CURTRIGHT, Foreman.

Fourth. Did two-thirds of the persons voting at such election vote in favor of such subscription and the issuance of bonds to pay for the same?

Answer, Yes. R. A. CURTRIGHT, Foreman.

In due time the defendant filed its motion for a new trial, alleging the following as the grounds therefor:

"MOTION FOR A NEW TRIAL.

"1. The court erred in the admission of evidence on the part of the plaintiff on the trial of said special issues.

"2. The court erred in excluding evidence offered by the defendant on the trial of said issues.

"3. The jury found said issues in favor of the plaintiff, contrary to the great weight of evidence.

"4. The court erred in refusing to give the instructions and each of them to the jury as requested by the defendant.

"5. The court erred in its charge to the jury.

"6. The jury should have found said special issues and each of them in favor of the defendant instead of the plaintiff.

"7. The jury erred in finding interest on the bonds sued on after their maturity at the rate of 7 per cent. per annum, contrary to the contract specified in said bonds, when they should have found interest on said bonds after maturity at the rate of 6 per cent per annum."

Which motion was overruled by the court, and defendant at the time duly excepted.

Defendant also filed a motion in arrest of judgment for the following grounds:

"MOTION IN ARREST."

"1. Because the plaintiff, by failing to reply and deny the special defense set up in the defendant's answer herein that the subscription of $100,000 made by the County Court of Knox county on behalf of said county on the 13th day of May, 1867, and the bonds sued on were issued in part payment of said subscription under and by authority of the special act alone under which the Missouri and Mississippi Railroad Cnmpany was incorporated, conclusively admitted said facts to be true, and the special findings of the jury are repugnant to and contradictory of the facts thus admitted.

"2. Because the plaintiff, by failing to deny the facts al-

leged in the special defense set up in defendant's answer herein, conclusively admitted said facts to be true and the plaintiff was and is hereby estopped from proving any facts contrary to said admitted facts, and said plaintiff should not have been allowed upon the trial to prove any facts contradictory to the facts thus admitted."

Which motion in arrest was overruled by the court and defendant at the time duly excepted.

In due time defendant filed its bill of exceptions, and brings said cause to this court by writ of error.

The Judgment of the Court was in pursuance of the finding of the Jury on the special issues. (Omitted Record. Pp. 19.)

The errors assigned and complained of, and for which a reversal is prayed, are as follows:

ASSIGNMENT OF ERRORS

1. The Court erred in receiving and admitting the evidence of Wm. F. Plummer, explaining orders of the County Court and recitals in the bonds sued on, and tending to show what he understood and believed, when the stock was subscribed and the bonds issued.

2. The Court erred in receiving in evidence the certificate of Agnew, Seever and Bunnell, purporting to give the result of the vote polled at the election held on the 12th day of March, 1867.

3. The Court erred in receiving in evidence the *statement* published in the *Knox County Democrat*, July 31st, 1879, purporting to show the bonded indebtedness of Knox County from 1867 to 1879, and the order of the County Court at the May term, 1880, allowing $85.75 for printing the same.

4. The Court erred in receiving in evidence book demoninated the "Bond Register" of Knox County, and especially the statement appended thereto in the handwrite of County Clerk Ennis, reciting that $100,000 worth of said bonds were issued by and pursuant to a vote of the people of said County.

5. The Court erred in refusing the special instructions asked for by the defendant.

6. The Court erred in its charge to the Jury, the same being misleadiug and prejudicial to the right of the defendant.

7. The Court erred in refusing and over-ruling the defendant's specific objections to the charge of the Court.

8. The Court erred in charging the Jury that the recitals in the bonds were not conclusive as to the act under which they were issued.

9. The Court erred in charging the Jury as to the legal effect and sufficiency of the two orders of the County Court of Knox County of February 6th, 1867, and March 4th, 1867.

10. The Court erred in charging the Jury as matter of law that the notice of the election held on the 12th day of March, 1867, was legal and sufficient, in face of the fact that plaintiff failed to prove that any notice whatever was published or given.

11. The Court erred in charging the Jury that they might infer that the bonds in question were issued under the general law, pursuant to a vote, from the subsequent acts of the County Court and its officers in levying taxes, &c.

12. The Court erred in charging the Jury that the law did not require two-thirds of all the qualified voters of the County, but only two-thirds of all who voted at the election, to authorize the issue.

13. The Court erred in charging the Jury in effect that no notice of said election was necessary, and that said election was not invalidated by a failure to give and publish the notice called for in the order of February 6th, 1867.

14. The Court erred in permitting the plaintiff to read in evidence the order of the County Court levying taxes for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874 and

1875, whereby tax levies were made to pay interest on bonds issued to said Railroad Company, showing a levy greater than 1-20 of one per cent., ranging from 30 to 75 cents on the $100 and other entries from the books of record made long subsequent to the issue of said bonds.

15. The Court erred in charging the Jury that it was competent for the County Court to issue said bonds under one or both of the acts in question, and if under both, then to find the special issues for the plaintiff.

16. The Court erred in refusing to instruct the Jury, as prayed by the defendant, that "the County Court had no authority to make said subscription without the assent of two-thirds of the qualified voters of said County, given at an election held for the purpose of obtaining such assent," and in charging the Jury to the contrary, that "the law only required that two-thirds of all who voted at the election should vote in favor of an issue of bonds."

17. The Court erred in rendering a judgment under the general Statute instead of under the special act of 1865.

BRIEF.

I.

The main issue submitted and tried by the jury was the question of the issue of the bonds in question; whether they were voted or non-voted bonds; whether they were issued pursuant to the General Statutes of Missouri, Chap. 63, Secs. 17 and 18, of 1866, page 338, or under Section 13 of the Special Act of 1865, incorporating the Missouri and Mississippi Railroad Company, Session Acts of Missouri, 1865, page 86, approved February 20, 1865.

If voted bonds under the General law, they are payable without restriction as they fall due. If M. & M. bonds under the Special Act, they are limited to a Special levy of *one-twentieth* of one per cent upon the assessed valuation for each year.

The plaintiff in error contends that they are not voted bonds under the *General Law*, and that the defendant in error is not entitled to be awarded a mandamus for the full collection of the judgment rendered, as prayed in the amended petition.

State ex rel. vs. Shortridge, 36 Mo. 126.

II.

1. The order ot the County Court of February 6, 1867, calling an election for the expression of an opinion upon railroads generally, contains no mention of the M. & M. R. R. Co.,

to which said bonds were subsequently issued. [Record p, 26.]

2. Nor does the order of May 13th, 1867, subscribing for the stock, purport to be made in pursuance of any vote. [Printed record p. 29.]

3. The bonds themselves on their face do not purport to have been issued under the general law, pursuant to a vote, but on the contrary, "under and pursuant to an order of the County Court of Knox county for subscription to the stock of the Missouri & Mississippi Railroad Company, as authorized by an Act of the General Assembly of the State of Missouri entitled "an act to incorporate the Missouri & Mississippi Railroad Company, approved Febrnary 20th, 1865." [Printed record p. 24.]

4. There is not a recital in the bonds, or a line in the order of the court for issuing the same, to indicate to a purchaser that they were issued under the general law pursuant to a vote of the people, but such an inference is negatived by the recital in the bonds that they were issued "as authorized" by the special act of 1865.

5. Even if there had been a lawful vote, upon clear and proper notice, with a two-thirds majority of all the votes of the county, still there would have been nothing thereby obligatory upon the county court to subscribe the stock and issue the bonds under and pursuant to said vote.

The court could still, notwithstanding the vote, refuse to act under it, and issue the bonds under some other act not so onerous to the county, and whether the County Court did so, must be gathered from its order making the subscription, and from the recitals in the bonds issued in payment therefor.

6. The character and obligations of the bonds were fixed

at the time of their execution and delivery in payment of the subscription. Subsequent acts and declarations of the county officials could not enlarge or restrict them.

Both the holder of a bond and the county issuing it are bound by the recitals of the bond, and if it recite the act under which it was issued, neither will be permitted to prove that it issued under some other act.

And "Every dealer in municipal bonds, which upon their face refer to the Statute under which they were issued, is bound to take notice of the Statute and all its requirements." * * * "If a purchaser may be, as he sometimes is, protected by false recitals in municipal bonds, the municipality ought to have the benefit of those that are true."

McClure vs. Township of Oxford, 94 U. S. 429.

Myer's Federal Decisions, Vol. 4. p. 703; Secs. 1399 and 1400.

Ogden vs. County of Daviess, 102 U. S. 634.

Myer's Federal Decisions, Vol. 4, p. 427; Secs. 907 and 908.

The latter case holds: "We have always held that every holder of a municipal bond is chargeable with notice of the provisions of the law by which the issue of his bond was authorized. * * * On the face of these bonds it appears that they were issued to the Chicago & Southwestern Company on account of an election held by 'certain taxable inhabitants' of the county. This clearly connects the bonds with the Chicago & Southwestern charter, and indicates unmistakably that they

were put out on the account of a 'strip' subscription. The holder is therefore chargeable with notice."

And there could be no *bona fide* holder of said bonds in the commercial sense, with right to claim any thing more than that conferred by the act recited, under which they purported to have been issued.

III.

The evidence shows without serious contradiction that both the County Court and the Railroad Company understood that the bonds were issued and received under the special act of 1865 without a vote, and not under thegeneral railroad law of the state pursuant to a vote.

After the vote of March 12th, 1867, and before the subscription was made the president and other officers of the M. & M. R. R. Co. appeared before the County Court of Knox Co., and refused to accept bonds issued on said vote, but agreed to accept bonds issued under and pursuant to the 13th section of their charter act of 1865.

This was assented to by the County Court, and afterwards the subscription was made and the bonds ordered and issued under the charter act, the payee and beneficiary of the bonds

preparing both the form of the order and the form and recitals of the bonds.

Neither the County nor the Railroad Company was willing to risk the legality of the vote and imperil the validity of the bonds by acting under the general law, and hence in fact acted under the other statute in question.

(See testimony of Sylvester Schultz, printed record, pp. 68 to 76 inclusive; testimony of A. L. Gilstrap, pp. 104 to 106 inclusive; testimony of Philip B. Linville, pp. 109 and 110; testimony of Jacob Pugh, pp. 111 and 112.)

Whether reference be had to the recitals in the bonds, or to the intention of the parties, it appears that the subscription was made and the bonds were issued under the special act and not under the general railroad law.

IV.

The Court charged the jury that the law did not require two-thirds of all the registered or legal voters of the county, but only two-thirds of all those who voted at the election, to authorize the subscription of stock and the issue of said bonds.

And it was shown and conceded throughout the trial that less than two-thirds of the registered voters of the county of Knox *assented*, at the election held March 12th, 1867. [Printed record, p, 66; and pp, 111 and 112, in the testimony of Schultz and Pugh.]

At that time both the Constitution and Statutes of the

State of Missouri required a registration of all the qualified voters of each and every county in the state. [General Statutes, 1866, 25. Art. II, Sec. 4. Const. of 1865. Genl. Stats. 1866, 905-907.]

And the Registration Books and list of qualified voters were required to be kept in the office of the county clerk. [Genl. Stats. 1866, 907, secs. 13 and 14.]

And the evidence shows without contradiction that at the time the election was ordered and held the registration books with a list of all the qualified voters of the county were on deposit in the office of the county clerk as the law required, though lost at the time the witnesses gave their evidence.

There were over 1,000 registered voters. For subscription 510. Against subscription 98.

(Printed record, pp. 28, 66, 111 and 112.)

It is earnestly and confidently submitted that this charge and the finding of the jury on the special issues, were against the law.

There could have been no valid subscription in this case without a vote of two-thirds of all the qualified voters of the county.

Section 17 of the General Railroad Law of Missouri, Genl. Stats. 1866, Chap. 63, p. 338, claimed to be the authority for the issue of said bonds, authorized the County Court to take stock for the county in, or loan its credit to, any railroad company, *provided* that two-thirds of the qualified voters of such county at a regular or special election to be held therein shall assent to such subscription.

Does it mean two-thirds of the qualified voters of the

county, or two-thirds of those who voted at the election, a number less than two-thirds of the whole?

This question has been directly answered, and said section emphatically construed, by the Supreme Court of Missouri.

State ex rel. vs. Harris, 96 Mo. 29.

The question arose under this identical section, and was upon the legality of a subscription to the stock of a Railroad Company, where the vote cast in favor of the subscription was shown by the registration books of the county to have been less than two-thirds of the registered voters of the county.

The Court held that "County Courts are only the agents of the county, with no powers except what are granted, defined and limited by law, and like all other agents they must pursue their authority and act within the scope of their powers:"

That it was competent to receive in evidence the registration books "for the purpose of establishing the number of qualified voters in the determination of the question whether or not at the election two-thirds of the qualified voters as ascertained by the registration assented to the subscription by voting for it:"

That, "the power of the County Court to subscribe to the stock of a railroad company was made by section 17, page 338, General Statutes, 1865, to depend upon the fact that two-thirds of the qualified voters of the county at a regular or special election held therein, should assent thereto:"

That, "in order to the exercise of the power it must appear that two-thirds of the qualified voters assented to the subscription by voting in favor of it, and that the mere inaction of

such voters by failing to vote did not express such assent within the meaning of the section."

This decision was rendered at the April term, 1888, more than a month after the trial of this cause in the Circuit Court.

It is the only decision of the State Court construing that particular section.

The section and the questions arising under it are now for the first time before this court, so far as our investigations have extended, and this court follows the decisions of the State Court construing the Statutes of its own State.

In *County of Cass vs. Johnson*, 95 U. S., 360, the question before the court was the constitutionality of the Township Aid Act of 1868, and not the section in question.

The same statute [Township Aid Act of 1868] was before the Supreme Court of Missouri in *State ex rel Woodson vs. Brassfield*, 67 Mo , 331.

On kindred subject and statutes, the court is referred to the following additional Missouri authorities:

The State ex rel. vs Sutterfield, 54 Mo., 391.
State vs. Winklemeir, 35 Mo., 103.
The State ex rel. Wear vs. Francis, 95 Mo., 44.
The State ex rel. Woodson vs. Brassfield, 67 Mo., 331.
Ranney vs. Bader, 67 Mo., 476.

V.

The court erroneously charged the jury, in effect, that the

notice under which the election was held was sufficient.

This was no election held at a time defined by statute. It was a special election ordered by the county court and the order itself defined how notice of such election should be given, and for what length of time. The notice as ordered was essential. "Elections fixed by law at a certain time and place may be legally holden, although notice has not been published or given; but if the time be not defined by statute, and is to be fixed by notice, the notice required is imperative."

Dillon on Municipal Corporations (second edition) Vol. 1, page 259, Sec. 136.

Cooley's Constitutional Limitations (third edition) 603.

Desty on Taxation, Vol. 2, p. 1126.

People vs. Seale 52 Cal. 72.

People vs. Castro 39 Cal. 69.

Mc Pike vs Penn. 51 Mo. 63
State vs Co. 60 75 Mo. 526.

In the order of the County Court of Knox county made on 6th day of February, 1867, page 26, printed record, offered and read by plaintiff, to ascertain by an election the sense of the qualified voters of Knox county whether or not said County Court should subscribe to the stock of some railroad; it was further ordered that public notice of said order for said election be given through the *Missouri Watchman* "for five weeks" and by printed hand-bills publicly exposed throughout the county. There was, and is in the record, an utter absence of any proof by plaintiff that such pnblic notice as required by said order, was ever "given through the *Missouri Watchman*

for five weeks " or for any length of time, and there was and is the same absence of proof of any notice of such election " by printed hand-bills publicly exposed throughout the county," or any part of the county. Plaintiff avers in his petition and assumes to prove that the said special election was held on the 12th day of March, 1867. Then that being true, the notice of five weeks which the order of the County Court required was not, and could not have been, given. Even if the hand-bills had been exposed throughout the county and the notice been published in the *Missouri Watchman* the very minute the order of the County Court was made, on the 6th of February, 1867; there still would want one day to make the "*five weeks.*" The year 1867 was not a leap year and the court excluding the first day, Feb. 6th, makes thirty-four days —no more. It takes both the day of making the order and the day of voting to count five weeks. The universal rule in computing time from one day to another is to exclude one day and include the other. Usually the day from which time is computed is excluded. This rule applies to construction of instruments, contracts, statutes and proceedings under them.

State ex rel vs. Tucker 32, Mo. Ap. 620 and cases cited;

Weeks vs. Huet, 19 Connecticut 376;

Owen vs. Slatter, 26 Ala. 547;

Tencher vs. Hiatt, 23 Iowa 527;

Cromelin vs. Brink, 29 Pa. St. 525;

Savings &c. Soc. vs. Thompson, 32 Cal. 347;

Forsythe vs. Warren, 62 Ill. 68;

Market National Bank vs. Pacific National Bank, 89 N. Y. 397;

Kane vs. Brooklyn, 114 N. Y. 586;
Beemis vs. Leonard, 118 Mass. 502;
Sheets vs. Selden, 2 Wall. 190;
Early vs. Doe, 16 Howard 610.

In State ex rel vs. Tucker, *supra*, the question was, as in the present case, the validity of the notice of special election. The time of the election in that case, as in this, was not defined by statute, but was to be fixed by notice. In that case the court construes "for four consecutive weeks" to mean *twenty-eight days*, and says "by excluding the first and including the last day, which is the usual mode of computation, we have a period of only twenty-four days between the first insertion and the election. Is this a legal notice? The question may be stated thus: Does the law require a notice of four weeks of seven days each, or does it require a sufficient period of time to cover four consecutive weekly insertions, though such time be less than twenty-eight days? In other words, must there be four weeks' notice of the election or a less time? Our answer is that there must be four weeks' notice—twenty-eight days' notice—of the election, the computation to be made by excluding the first day of the notice and including the day of the election." In Market National Bank vs. Pacific National Bank, *supra*, the court decided that a publication for "not less than once a week for six weeks" meant six full weeks, or forty-two days.

In Early vs. Doe, *supra*, this court says: "The prop-o-

sition *for*, means of itself duration when it is put in connection with time, and as all of us use it in that way, in our every day conversation, it cannot be presumed that the legislator, in making this statute, did not mean to use it in the same way. * * * When we say anything may be done in twelve weeks, or that it shall be done for twelve weeks, after the happening of a fact which is to precede it, we mean that it may be done in twelve weeks, or eighty-four days, or as the case may be that it shall not be done before."

Indeed the statute of Missouri in force at the time, and ever since, these bonds were issued especially provides that in "the construction of all statutes of this state," and proceedings thereunder, " words and phrases shall be taken in their plain or ordinary and usual sense * * * the word ' month ' shall mean a calander month, and the word 'year' shall mean a calander year * * * Fourth, the time within which an act is to be done shall be computed by excluding the first day and including the last." G. S., of Mo. 1866, sect., 6, pp. 83 and 84; R. S. of Mo. 1879, sect., 3126, p. 522; R. S. of Mo. 1889, sect. 6570, pp. 1541-2.

VI.

Over the objection of the defendant, the court charged the jury, among other things, as follows: "In arriving at a conclusion upon the issues submitted to you as to which law the county court intended to act under, you are privileged to consider all the facts and circumstances of the case as developed

by the testimony. You may look at the recitals contained in the bonds (which in my opinion isn't conclusive on the question in issue), but you will give the recital such weight as you think it deserves.

"You will also consider the subsequent action of the county court in the matter of levying more than 1-20 of one per cent. per annum for the period of several years to pay interest on the bonds.

"You may also consider any entries or recitals appearing on the Bond Register of the county in reference to the bonds in suit, and any statements which the county court of Knox county caused to be published concerning the bonds.

"From all such documents as are in evidence, as well as from the oral testimony, you will determine what was the true intent of the county court in issuing the bonds—that is to say, whether they intended to act exclusively under the Railroad Charter, or under the authority conferred by a popular vote, or under both powers."

This portion of the Court's charge related to the matters of evidence, objected to by the defendant at the trial, such as the order of the county court levying taxes, appearing on page 30 of the printed record, Exhibit "A", from the *Knox County Democrat*, on July 31, 1879, showing statement of the county's bonded indebtedness and a summary thereof; and orders in county court records of 1879-'80, allowing accounts for printing the same; and the entries, purporting to be from the Bond Register of Knox county, with the statement appended thereto,

in the hand-writing of Clerk Ennis, contained in printed record on pp. 51-62, inclusive.

It is difficult to perceive on what principle of law the said testimony could be received and the said charge given to the jury. This is not a case in which there could arise any question of estoppel or of ratification. The county court was simply the agent of the county, and had no power or authority to act except as conferred by the statute. When the county court subscribed the stock and issued the bonds in payment thereof, the character, quality and obligation of the bonds become fixed. The county court thereafter had no futher power to increase or lessen the burdens and obligations of the county with respect to said bonds. Marsh vs. Fulton county. 10 Wallace, 676. [Myer'sFed. Decissons, Vol. 4, p, 574-576: Sec. 1188.]

The State ex rel. vs. Harris, 96 Mo., 29.

It would seem from the portion of the charge quoted above that the circuit court admitted said evidence as tending to show what was the intent of the county court in issuing the bonds—that is to say, whether they intended to issue them under the Railroad Charter or under the vote. For such purpose, the evidence was not competent.

Had these been bonds purporting on their face to have been issued under the general law pursuant to a vote, no admission, declaration or order of the county court, or of its officers, could have been received as tending to show that the county court originally acted under the charter of the Railroad Company, with the view of forcing the holder of the bonds to receive payment therefor under said act. Even if the county court had subsequently entered an order of court declaring

their purpose and intent in issuing said bonds, and under what statute the same were issued, it could not have been received in evidence on the special issues submitted to the jury. No act of the county court after the issue of the bonds could render them better or worse. Otherwise the county court would be in a position to create evidence *ad libitum*, and thereby either ruin the county or the holder of the bonds, The subsequent conduct of the parties to an executed contract cannot be received in evidence as an interpretation of the contract. But here the county court is not even a party to the contract--simply the agent of a party, whose authority expired on the execution and delivery of the bonds The parties to the contract are the tax-payers of the county on one side and the holder or bearer of the bond on the other side.

This matter can be made plain by reversing the position of the parties to this suit. If the special act of 1865 were more favorable to the holder of the bonds, and he was seeking to enforce them under the provisions of the charter and was claiming that they were issued in pursuance of the charter, what a pitiful defense would that of the county be in contending that the bonds were issued under the general law pursuant to a vote, in the light of the evidence contained in this record.

The oral evidence of William F. Pulmmer tending to show that he as County Judge, considered that he was acting under the authority of the vote, was objected to by the defenda nt as incompetent. Afterwards the court received evidence on the same subject as to the intent of the court in issuing said bonds

on the part of the defendant; and the evidence of Sylvester Schultz, A. L. Gilstrap, Phillip Linville and Jacob Pugh was conclusive that the bonds were not issued under the vote, but under the railroad charter. (Printed record pp. 64, 109, 111).

The State ex rel. vs. Harris, 96 Mo. 29, *supra*.

Marsh vs. Fulton Co., 10 Wallace, 676, *supra*.

McCracken vs. City of San Francisco, 16 Cal. 624.

VII.

The statement appended to the Bond Register on page 60 of the printed record was in the hand-writing of Clerk Ennis, entered long after the issuing of the said bonds: see testimony of F. M. Miller on page 113 of printed record. Said statement recites that one hundred thousand dollars of the bonds issued to the Missouri & Mississippi R. R. Co. was ordered by an election held on the 12 day of March, 1867, "under an act of the Legislature of Missouri entitled 'An act to incorporate the Missouri and Mississippi Railroad Company, approved February 20th 1865."

Such statement was purely hearsay and ought to have been excluded on the objection of the defendant.

If evidence at all it shows that the bonds were issued under the M. & M. charter.

VIII.

The Court erroneously charged the jury that the *Omnibus* provisions contained in the two orders of the county court of February 6th, 1867, and March 4th, 1867, were good and sufficient, and that the notice of the election held under the same on the 12th day of March, 1867, was legal and valid, and that it was competent for the County Court to act under either one or both the statutes in question, and if under both, then to find the special issues for the plaintiff.

1. It is submitted that the manner of submitting the vote in the two orders was not legal. The people had the right to be informed by the order and the notice what road they were aiding, under what statutes they were voting, and on what terms the subscription was to be made.

2. The Court charges the jury in effect to find the special issues for the plaintiff if a vote was had, even if they believed the subscription was in fact under the Railroad Charter.

3. It is submitted that if the subscription was in fact under the charter, then it makes no difference whether there was a vote or not. The holder of the bonds would have to look solely to the Statute under which his bonds were issued, and in this case be limited to the special tax of 1-20 of one per cent. Even after a *valid* vote, the county court could elect under which Statute they would proceed.

And if at the request of the railroad company, subsequent to the pretended vote, the court did proceed and subscribe under the charter, then the special issues ought to have been

found for the defendant county, and the jury should have been so instructed as requested by the defendant.

Upon the whole case we respectfully submit that the judgment should be reversed and that, plaintiff, the defendant in error, be limited to the recovery of its ~~general~~ judgment, under the special act.

B. R. DYSART,
with R. G. MITCHELL.
Attorneys for Plaintiff in Error.

147 U 891

Supreme Court U. S.
FILED.
DEC 1 1892
JAMES H. McKENNEY,
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vs.

THE NINTH NATIONAL BANK OF THE CITY OF NEW YORK.

IN ERROR TO THE NORTHERN DIVISION OF EASTERN DISTRICT OF MISSOURI.

Brief and Argument for Defendant in Error.

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vs.

NINTH NATIONAL BANK, &c., DEFENDANT.

STATEMENT OF CASE.

This is an action brought originally by the defendant in error, a banking company of New York, in the eastern district of Missouri, at St. Louis, against the plaintiff in error on certain county bonds issued by Knox county, in Misouri, to the Missouri and Mississippi Railroad Company, a company incorporated under a special charter of the Missouri legislature approved February 20, 1865.

Before any trial was had Congress passed an act establishing at Hannibal, Mo., the northern division of said eastern district of Missouri, and, in this division, Knox county was included. Thereupon, in 1887, on the application of the county, the case was transferred to the new court at Hannibal.

After the transfer amended pleadings were filed by both parties. The bank alleged that the county issued the bonds sued on in 1867 and 1868 in payment of its stock of one hundred thousand dollars previously subscribed to said "Missouri and Mississippi Railroad Company" and by authority of a vote of the people taken according to law. It further charged that the county, in consideration of said bonds, accepted and received from the railroad company certificates of stock and ever thereafter voted said stock in the management and conduct of the company's affairs, and for many years levied and collected taxes to pay and did therewith pay the maturing coupons in full on said bonds. It also alleged purchase for value and ownership of the bonds sued on and prayed judgment. The bank in its petition or declaration made the following allegations, to wit:

"And plaintiff further says that all of said bonds and coupons hereinbefore described in the petition were issued and negotiated by the defendant county to the Missouri and Mississippi Railroad Company or bearer, as stated, and that said company was incorporated by special act of the General Assembly of Missouri, as hereinbefore stated, which said company was, at the time of the subscription of stock by said county and at the time of the issue of the bonds and coupons herein described, authorized and empowered by the terms of its charter to build, construct, and operate a railroad from the town of Alexandria, in Clark county, Missouri, through the county of Knox and through the town of Edina, the county-seat of said county, to some point on the Missouri river and connecting with the North Missouri railroad, which said railroad so authorized would run from Alexandria aforesaid in a southwest course through the said town of Edina, and through said county of Knox to Macon City or to a point on the Missouri river, and would intersect the North Missouri railroad at or near Macon City, in Macon county, Missouri; and plaintiff further avers that all of said bonds and coupons were authorized, issued, and negotiated by said defendant county under and by authority of orders of the county court of said county, duly entered on the records of said court, and under and by the authority of a special election

of the qualified voters of said Knox county, duly ordered and held, under and according to the laws of Missouri, in said county, on the 12th day of March, 1867, at which election five hundred and ten votes were duly and legally cast in favor of making the subscription to said company and of issuing therefor the bonds herein described and only ninety-eight votes were cast against the said subscription and issue of bonds. Wherefore plaintiff says that at said election, so called and held in said county according to law, more than two-thirds of the qualified voters of said county assented to and authorized the subscription of stock to said company in the sum of one hundred thousand dollars, for the payment of which the bonds and coupons hereinbefore named were issued and negotiated, and said subscription and issue of bonds were made by said county court by virtue of said authority; and plaintiff further avers that from the year 1867 to the year 1874 and both inclusive the defendant county caused to be levied and collected thereon a tax sufficient to pay full interest on all the bonds issued by virtue of said subscription, and during the said period and thereafter, while said bonds and coupons were passing for full value into the hands of purchasers in the open market, the county court of said county and the people thereof admitted and declared by various and divers acts, both by record and *in pais*, that said subscription and issue of bonds were authorized and made by authority of said election. Wherefore plaintiff says that defendant is now estopped from declaring or averring to the contrary."

The county, in its amended answer, admits that it issued and delivered the bonds sued on to the company named in payment of stock subscribed to said company, but denies that they were authorized by a vote of the people. It admits that the railroad company was, at the time, duly incorporated under the special act of the legislature, and also that the county accepted from it a stock certificate, but denies that it voted the stock. It denies that the county levied or collected any taxes to pay the coupons of the bonds beyond the one-twentieth of one per cent., as authorized by the special charter of February 20, 1865. The county then alleges that it issued the bonds solely under the 13th section

of the act "to incorporate the Missouri and Mississippi Railroad Company" and without any authority derived from a vote of the people, and in its denial of an election the following is used:

"Defendant, for answer to each and every other count in said petition, denies that the bonds described in said counts or any of them were issued under or by authority of a special election of the qualified voters of Knox county, duly ordered and held, *or* according to the laws of Missouri, in said county on the 12th day of March, 1867, or at any other time, or that the number of votes alleged was cast in favor of making the subscription described in said counts, or that two-thirds of the qualified voters of said county assented to or authorized the subscription of stock to said company in the sum of $100,000 or any other sum, or that the bonds and coupons described in said counts or any of them, or any of said bonds and coupons, were issued or negotiated in payment of the subscription described in said counts or any of said counts, or that said subscription and issue of bonds were made by the county court of Knox county by virtue of the authority alleged in said counts or any of them. Defendant denies that the bonds sued on, or any of them, were issued under or by authority of the assent of two-thirds of the qualified voters of said county, or that said subscription was made under or by authority of the assent of two-thirds of the qualified voters of said county. Defendant denies that the county court of said county or the people thereof admitted or declared by various or divers acts, either by record or *in pais*, that said subscription or issue of bonds was authorized or made by authority of the election alleged in said counts or any of them. Defendant denies that any election to obtain the assent of the qualified voters of said county to the subscription described in said counts was ever held."

The defendant below having pleaded the statute of limitations against the bonds, the plaintiff withdrew all bonds and coupons barred at the commencement of the suit.

The case was tried before a jury, and the plaintiff below, after proof of execution, read the bonds, a part of them dated October 1, 1867, and a part on February 1, 1868, all bear-

ing interest at seven per cent. per annum and payable at the National Bank of Commerce, in New York city. The bonds were made payable to the said railroad company or bearer and recited that they were "issued under and pursuant to an order of the county court of Knox county for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri entitled An act to incorporate the Missouri and Mississippi Railroad Company, approved February 20, 1865."

Sections 1, 7, 12, and 13 of the act of February 20, 1865, were then read. Section 1 incorporates the company. Sections 7, 12, and 13 are follows:

"SEC. 7. Said board of directors shall have full power and authority to survey, mark out, locate, and construct a railroad from the town of Macon, in the county of Macon, in the State of Missouri, through the town of Edina, in the county of Knox, in said State, and thence to or near the northeast corner of said State, in the direction of Keokuk, in Iowa, or Alexandria, Missouri, and for such purpose may obtain by grant, gift, or donation any quantity of land for the purpose of a road-bed not exceeding one hundred feet wide, depots, warehouses, machine shops, water stations, and turnouts, and may select such route as they may think best."

"SEC. 12. The company may extend their road from the said town of Macon or from any other point on said road in a southwest direction to the Missouri river or to such intermediate point as they may think proper."

"SEC. 13. It shall be lawful for the corporate authorities of any city or town, the county court of any county desiring so to do, to subscribe to the capital stock of said company and may issue bonds therefor and levy a tax to pay the same, not to exceed one-twentieth of one per cent. upon assessed value of taxable property for each year."

The plaintiff then read in evidence an order of the county court of Knox county made on the 6th day of February, 1867, as follows:

Order of County Court, Knox County.

Now, at this day, is presented to the court a petition signed by persons asking this court to order an election for the purpose of ascertaining the sense of the qualified voters of Knox county in regard to this court subscribing one hundred thousand dollars for the purpose of constructing a railroad through Knox county; and the court, after hearing said petition read in open court and being fully advised in the premises, do order an election to be held on the Tuesday after the second Monday in March next, at the various precincts in said Knox county, to ascertain the sense of the people of Knox county as to whether or no they do authorize the county court of the county of Knox to subscribe stock to the amount of one hundred thousand dollars to a railroad company which may construct a railroad running from West Quincy, in this State, thence west through Knox county to some point on the Missouri river, or in a company which may construct a railroad running from Alexandria, in this State, southwest through Knox county to intersect the North Missouri railroad at or near Mason City, or in any other railroad company which may duly organize under the laws of this State and may construct a railroad through Knox county, running through Edina and connecting with the North Missouri railroad, or running to Quincy, in Illinois, or Macon, Missouri, or any point on the Missouri and Mississippi rivers, the stock to be taken being subject to the condition that it shall be payable in county bonds bearing seven per cent. interest and running ten years, and the further condition that all monies arising from the sale of said bonds shall be expended in the construction of said railroad within the county of Knox aforesaid; and further ordered that public notice of this order of court be given through the Missouri Watchman for five weeks and by printed handbills publicly exposed throughout the county; and further ordered that the ballots be printed or written as follows:

Shall the court subscribe one hundred thousand dollars? "Yes."

Shall the court subscribe one hundred thousand dollars? "No."

Plaintiff read also from the General Statutes of Missouri (1865), at page 338 and following ("chapter 63 of Railroad Corporations"):

SECTION 17. "It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town to take stock for such county, city, or town in or loan the credit thereof to any railroad company duly organized under this or any other law of the State: *Provided*, That two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent to such subscription."

SEC. 18. "Upon the making of such subscription by any county court, city, or town, as provided for in the preceding section, such county, city, or town shall thereupon become, like other subscribers to such stock, entitled to the privileges granted and subject to the liabilities imposed by this chapter or by the charter of the company in which such subscriptions shall be made, and in order to raise funds to pay the installments which may be called for from time to time by the board of directors of such railroad it shall be the duty of the county court or city council or trustees of such town making such subscription to issue their bonds or levy a special tax upon all property made liable by law for county purposes and upon the actual capital that all merchants and grocers and other business men may have invested in business in the county, city, or town to pay such installments, to be kept apart from other funds and appropriated to no other purpose than the payment of such subscription; but the total amount of tax levied for railroad purposes in any one year in any county, city, or town shall not exceed thirty per centum of the subscription made by such county, city, or town."

SEC. 21. "Any county court, city, or town which has heretofore subscribed to the capital stock of any railroad in this State shall be entitled to the privileges and subject to the liabilities of other stockholders in such company, and the county court or city or town council shall have all the rights and powers to provide funds to pay such subscription as are granted to county courts or cities by this chapter, and may levy a special tax to pay the interest on their bonds and to provide a sinking fund to pay the principal."

SEC. 22. "Any county court refusing to perform any of

the duties required of it by this chapter may be proceeded against by writ of *mandamus*, to be sued out of the circuit court for the county so refusing."

Plaintiff below then read the following orders from the records of the county court of Knox county:

"It is ordered by the court that the same persons who were appointed judges of the general election in November, 1866, be, and are hereby, appointed judges of the special election to be held on the Tuesday after the second Monday in March next (12th inst.) for the purpose of ascertaining the sense of the citizens of Knox county as to this court subscribing for Knox county $100,000 in a railroad company for building a railroad through Knox county. Ordered that certificates of appointment be issued by the clerk to said judges under the seal of this court, and further ordered that the clerk make out poll books for the several precincts in Knox county and deliver them to the sheriff of the county for distribution."

Order of Knox County Court, March 4, 1867.

Now, at this day, it is ordered by the court that the order made heretofore, to wit, on the sixth day of February, 1867, in regard to the county court subscribing stock to the amount of one hundred thousand dollars to some railroad company *who* may construct a railroad through Knox county be amended so as to read as follows, to wit:

"The order of this court made on the 6th day of February, 1867, ordering an election to be held at the various election precincts of Knox county on the Tuesday following the second Monday in March, 1867, for the purpose of determining as to whether or no the county court should be authorized to subscribe one hundred thousand dollars to some company which might construct a railroad running through Knox county, is hereby amended so as to read as follows: It is hereby ordered by the county court of Knox county that an election be held at the various election precincts in Knox county on the Tuesday after the second Monday of March, 1867, to ascertain the sense of the qualified voters of said county as to whether or no they do authorize the

county court of said Knox county to subscribe stock to the amount of one hundred thousand dollars in any railroad company which may construct a railroad running from West Quincy, in this State; thence west through Knox county, and running through Edina, the county-seat of said Knox county, to some point on the Missouri river; or in a company which may construct a railroad running from Alexandria, in this State, southwest through Knox county and through Edina, the county-seat of said Knox county; thence west so as to intersect the North Missouri railroad at or near Macon City; or in any other railroad company which may duly organize under the laws of the State and which may construct a railroad running through Knox county and through Edina as aforesaid and connecting with the North Missouri railroad, or running through Knox county and through said Edina to Quincy, Illinois, or Macon City, Missouri, or to some point on the Mississippi or Missouri river, the stock to be taken to be subject to the conditions that it shall be payable in county bonds, bearing seven per cent. interest and running ten years, and that all moneys arising from the sale of said bonds shall be expended in the construction of a railroad within the county of Knox aforesaid; and further ordered by the court that the ballots or tickets voted to be marked as follows, viz:

"Shall the county subscribe one hundred thousand dollars to the railroad? 'Yes.'

"Shall the county subscribe one hundred thousand dollars to the railroad? 'No.'

"And further ordered by the court that so much of the former order made by this court February 6, 1867, in relation to said subscription, &c., as conflicts with this order be, and the same is hereby, revoked."

Entry from Record of Court, March 18, 1867.

"In vacation. The clerk of this court, in conjunction with Joel Seever and David Bunnell, two justices of the peace within and for the county of Knox, on the 18th day of March, 1867, proceeded to count the votes cast at the special election held on the 12th day of March, 1867, at the various election precincts for the purpose of ascertaining the

sense of the legal voters of Knox county as to whether the county court should subscribe $100,000 to any railroad company who would build a railroad through Knox county, and find the vote as follows:

Greensburg township:	For subscription—yes, 32 votes;	no, 11 votes;
Lynn township:	yes, 48 votes;	no, 1 vote;
Salt River "	yes, 31 votes;	no, 38 votes;
Jeddo "	yes, 52 votes;	no, none;
Benton "	yes, 101 votes;	no, 4 votes;
Centre "	yes, 225 votes;	no, 7 votes;
Fabius "	yes, 21 votes;	no, 35 votes;

showing by the votes recorded in the poll books, as counted and received by us, that there were cast for subscription of stock by Knox county five hundred and ten votes (510 votes), and that there were cast against subscription of stock by Knox county ninety-eight votes (98 votes).

We certify the above to be a correct statement of the number of votes cast at the special election for and against the proposition for the county court of Knox county to subscribe $100,000 to the railroad.

Given under our hands the date above written.

(Signed) JAMES C. AGNEW, *Clerk.*
JOEL SEEVER, *J. P.*
DAVID BUNNELL, *J. P.*"

Order of County Court, May 13, 1867.

"Now, at this day, it is ordered by the court that the president justice of this court be, and is hereby, authorized to subscribe for and in the name of county of Knox for the use of the inhabitants thereof one thousand shares of stock in the capital stock of the Missouri and Mississippi Railroad Company upon the following terms and limitations: 1st, that the sum of one-half of one per cent. of said stock, being one hundred thousand dollars, be paid in cash to defray ex-

pense of survey of said road through Knox county; 2nd, that the remaining 99½ per cent. of said stock be issued in bonds of the county of Knox, bearing seven per cent. interest per annum and running ten years, with coupons attached, the interest on said bonds payable annually at the treasury of the county of Knox aforesaid; said bonds to be signed by the president justice of said county court and attested by the clerk thereof and made payable to said railroad company upon order of the president and directors thereof, but in no case shall bonds be issued except for work actually done on said railroad within the limits of said Knox county, which amount of work shall in all cases be shown by the estimates of the engineer of said road, verified by his affidavit, which said estimates shall be filed in the office of the clerk of this court."

The plaintiff next read in evidence orders of the county court levying taxes for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, whereby tax levies were made to pay interest on bonds issued to said railroad company as follows:

"*Order of County Court Levying Taxes.*

In the year	1868	30	cts.	on each	$100.
" "	1869	30	"	"	"
" "	1870	30⅓	"	"	"
" "	1871	50	"	"	"
" "	1872	50	"	"	"
" "	1873	25	"	"	"
" "	1874	75	"	"	"
" "	1875	5	"	"	"

Plaintiff, by its counsel, here read the decision of the supreme court of Missouri in the case of The State *ex rel. vs.* Shortridge *et al.*, delivered in May, 1874, and reported in 56 Mo., p. 126, limiting the power of the county court to the levy of a tax of one-twentieth of one per cent. to pay certain bonds issued to the Missouri and Mississippi Railroad Company, and it was admitted that the order made on the 23d day of April, 1874, levying 75 cents on the $100, was on the 1st day of June, 1874, set aside and a levy of 5 cents on the $100 made to pay said bonds."

Plaintiff next read the deposition of W. F. Plummer, who was presiding justice of the county court of Knox county when the bonds sued on were issued, and who signed them as such justice. (See Record from pp. 30 to 50, inclusive.) Judge Plummer in his testimony states that the subscription of $100,000 was made and the bonds therefor issued under and by authority of the vote of the people, and at that date no bonds would have been issued by any court without such authority.

Plaintiff then read from the General Statutes of Missouri of 1865, at pages 229 and 230, the following:

"SECTION 27. It shall be the duty of the clerk of the county courts:

"*First.* To keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury and crediting him with the amount he may have disbursed between the periods of his respective settlements with the court.

"*Second.* To keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or who may have become entitled to receive meneys therefrom.

"*Third.* To file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted to be read in evidence in all courts of law and elsewhere.

"*Fourth.* To issue warrants on the treasury for all money ordered to be paid by the court, keep an abstract thereof, present the same to the county court at every regular term, balance and exhibit the accounts kept by him as often as required by the court, and keep his books and papers at all times ready for the inspection of the same or any judge thereof."

Idem Wagner's Mo., Stat. 1872, page 413, § 27.

SECTION 29. "It shall be the duty of the several tribunals transacting business in the several counties of the State, at the regular spring term of their respective courts in each

year, to ascertain the amount of money, &c. * * * And the said tribunals shall at the same time make out a statement of debt due by their counties, and a detailed account of the receipts and expenditures of the same for the preceding year, showing from what officer and on what account any money has been received and to what individuals and on what account any money has been paid, and shall strike the balance, showing a deficit, if any, and the balance in the treasury, if any."

SEC. 30. "The facts thus ascertained and the accounts and statements thus made out shall be entered of record in the said courts and published in some newspaper in each county where any such may be printed," &c.

These provisions were in force when the bonds in controversy were issued, and they again appear as sections 5387, 5389, 5390, and 5391 of "Revised Statutes of Missouri, 1879," at pp. 1060–'61, and are still the law of the State.

Plaintiff then read the following act:

"It shall be the duty of the chief financial officer, clerk auditor, or comptroller of any county, city, or incorporated town to furnish the State auditor a statement, verified by his oath, of all the bonds and coupons outstanding, with all the details the auditor may desire as to date of issue and maturity, rate of interest, place of redemption, purposes for which issued, and the like; and the said officer shall annually thereafter, on or about the first day of January, make a statement of the bonds and coupons retired by the county, city, or incorporated town since the last report. The State auditor shall make entry of the bonds so reported."

Laws of Mo., 1871–'2, p. 57, § 3.

Plaintiff then offered and read a certified extract from the bond register of the county in the following words and figures:

"EXHIBIT B, OR BOND REGISTER.

Statement of Bonded Debt of Knox County, Mo., January 1, 1874.

Date of issue.	No. bonds issued.	Denomination of bonds.	For what purpose issued.	Amount issued.	Amount outstanding.	When due.	Remarks.
1867, '8	33	500	Missouri & Mississippi R. R.	16,500	12,000	Oct. 1, 1877	$4,500. Retired.
1868, '9, '70	192	500	" " "	96,000	89,500	Feb. 1, 1878	6,500. "
1867, '8, '9, '70	100	50	" " "	5,000	2,750	Oct. 1, 1877	2,250. "
1868, '9, '70	282	50	" " "	14,100	11,850	Feb. 1, 1878	2,250. "
1870-'3	106	500	" " "	53,000	53,000	Feb. 1, 1880	
				184,600	169,100		County indebtedness.
1870	40	500	Quincy, Missouri & Pacific R. R.	20,000	20,000	Dec. 1, 1890	Issued by Jeddo township.
1872	100	500	" " " "	50,000	50,000	Jan. 1, 1872	Issued by Center township. Registered.
1872	10	500	" " " "	5,000	5,000	Sept. 2, 1892	Issued by part of Lyon township. Registered.
				75,000	75,000		Total t'w'p indebtedness.
			Total issue	259,600	244,100		County & township indebtedness

STATE OF MISSOURI, }
County of Knox. }

Personally appeared before the undersigned, a clerk — circuit court within and for the county —, who is known to me, and who upon his oath says that the foregoing statements are true and correct, as appears to him of record.

E. RINEHART,
Clerk of County Court.

Sworn to and subscribed before me, at office, in Edina, this 10th day of Feb., A. D. 1874.

[SEAL.] EDWARD M. RANDOLPH,
Circuit Clerk.

One hundred thousand dollars of the bonds issued to the Missouri and Mississippi R. R. Co. ordered by an election held 12th M'ch, 1867, official return being 510 votes for and 98 against, under an act of legislature of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved Feb'y 20th, 1865. All the bonds issued to the Missouri and Mississippi Railroad Company were issued under authority of this act. Bonds issued to the Quincy, Missouri and Pacific R. R. were issued under authority of an act to amend an act entitled An act to facilitate the construction of — railroad in the State of Missouri, approved M'ch 23rd, 1868, and authorized by a vote of more than two-thirds of the qualified voters of the township elections held as follows: Jeddo t'w'p, May 31st, 1870, 111 votes for, 39 against; Center t'w'p, Nov. 30th, 1869, 151 votes for, 58 against; subdiv. No. 2 t'w'p, Sept. 29th, 1871, more than $\frac{2}{3}$ of votes being for the issue.

Issued by—	Issued to—	Date.	Number.	Size.	Interest, rate.	Coupons—where payble.	Coupons—when payable.	Bonds mature—	Registered with the State auditor or not.
Jeddo township.	Quincy, Missouri and Pacific R.R.	Dec. 1, 1870	40	$500 each	8%	National Bank of Commerce, N. Y.	Semi-annual	Dec. 1, 1890	Not registered.
Center "	Same	Jan. 1, 1872	100	$500 each	8%	Same	Same	Jan. 1, 1892	Registered.
Subdiv. No. 2, school t'w'p No. 15.	Same	Sept. 2, 1872	10	$500 each	10%	Same	Same	Sept. 2, 1892	Registered.
Knox Co.	Missouri and Mississippi R. R.	Oct. 1, 1867	33	$500 each	7%	Treasurer's office, Edina, Mo.	Annually	Oct. 1, 1877	Not registered.
Same	Same	Feb. 1, 1868	192	$500 each	7%	National Bank of Commerce, N. Y.	Annually	Feb. 1, 1878	Not registered.
Same	Same	Oct. 1, 1867	100	$50 each	7%	Treasurer's office, Edina, Mo.	Annually	Oct. 1, 1877	Not registered.
Same	Same	Feb. 1, 1868	282	$50 each	7%	National Bank of Commerce, N. Y.	Annually	Feb. 1, 1878	Not registered.
Same	Same	Feb. 1, 1870	106	$500 each	7%	Same	Annually	Feb. 1, 1880	Not registered.

STATE OF MISSOURI, }
County of Knox. }

I, Samuel Ennis, clerk of the county court of Knox county, certify that the foregoing is a true statement of the matters set forth as the same appears upon the records of said court.

In testimony whereof I herewith set my hand and the seal of said court. Done at office, in Edina, March 17th, 1885.

SAMUEL ENNIS,
County Clerk.

STATE OF MISSOURI, }
County of Knox. }

I, F. M. Miller, clerk of the county court for said county, hereby certify the above to be a copy of a statement attached to the front part on blank leaf of Railroad Bond Record No. 1 of Knox county, Missouri, and kept in the county clerk's office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, Mo., this the 27th day of February, 1888.

F. M. MILLER,
Clerk County Court."

Plaintiff next read from the "Knox County Democrat" published statements of the receipts and expenditures of Knox county from 1867 to 1878, inclusive, and also statements of the debt of the county, as required by law, in words and figures as follows:

"EXHIBIT "A."

The Knox County Democrat.

Edina, Mo., Thursday, July 31, 1879.

Griffin Frost, editor and publisher. Vol. IX, No. 15.

Statement.

Bonded indebtedness of Knox county on account of the subscription to the M. & M. R. R., with the amount of tax levied and collected and the receipts and expenditures from May 13th, 1867, to June 10th, 1879.

Under act of General Assembly approved February 29th, 1875, an election was held March 12th, 1867, upon the

proposition to subscribe $100,000 to M. & M. R. R. Co., which resulted in 510 votes for and 98 against said subscription.

In pursuance of said election an order of the county court was made May 13th, 1867, subscribing to said railroad company $100,000 in 7 per cent. 10-year bonds at par for work done in Knox county on the sworn estimate of the engineers of said road. Under special act of the legislature incorporating said road the county courts were authorized to make such subscription as they might deem advisable. Under this provision, on the 6th day of September, 1869, an additional subscription was made on the same terms as above for $30,000. On the same day an additional subscription was made by said court for $100,000 in 7 per cent. 20-year bonds at par, interest payable semi-annually, $50,000 when said road-bed is completed ready for the iron from Clark City, in Clark county, to Edina, and $50,000 when the cars are running on said road from said Clark City to Edina.

On the 2nd day of May, 1870, an order was entered of record authorizing the president justice of the county court to subscribe $55,000 additional to complete the grade, bridges, and tieing of the first division of said road, payable in 7 per cent. 10-year bonds at par for work in Knox county upon the engineer's estimate, duly sworn to.

On the 20th day of December, 1870, 100 one-thousand-dollar bonds were issued, payable February 1st, 1891, with interest at 7 per cent., payable semi-annually, at the Bank of Commerce, city of New York, but no interest to run until delivered to the M. & M. R. R. Co. These bonds were delivered to P. B. Linville, trustee, by T. O. Wamsley, president justice, under order of county court, vol. 3, page 636. All of these bonds were afterwards delivered to the county court by P. B. Linville and were publicly destroyed.

Of the first subscription there was issued $112,500, of which there is now outstanding $100,000; of the second subscription there was issued $19,100, of which there is now outstanding $14,300; of the fourth subscription there was issued $53,000, all of which is now outstanding, making a total of outstanding bonds $167,300, of which $6,600 is in outstanding warrants on the M. & M. R. R. fund which have been substituted for that amount of bonds. Warrants have also been issued on said bonds for $1,094.35, being for

interest on bonds thus cancelled. Warrants were also issued March 15th, 1879, in favor of G. W. Harshman, on the county revenue or general expenditure fund, aggregating $10,136.74, in payment of judgments obtained in the United States circuit court for accrued interest on the M. & M. R. R. bonds.

The present condition of the indebtedness of the county on account of subscription to the M. & M. R. R. is as follows:

Total subscription	184,600 00
Total amount of bonds paid	17,300 00
Bonds outstanding (unpaid)	160,700 00
Warrants unpaid substituted for bonds	6,600 00
Unpaid coupons outstanding	49,863 26
Warrants unpaid substituted for coupons	11,231 09
Total outstanding indebtedness	228,394 35

The above statement does not include interest on overdue bonds and coupons nor interest on warrants outstanding; which interest, if added to the above, would increase the total indebtedness to $230,000.

Summary.

Tax levied on account of M. & M. R. R. from the year 1867 to 1878, inclusive.

G. W. Fulton,	collector,	tax	book,	1867	10,315 52
Same,	"	"	"	1868	8,423 34
H. R. Parsons,	"	"	"	1869	8,818 82
Same,	"	"	"	1870	10,441 65
Same,	"	"	"	1871	16,589 62
Same,	"	"	"	1872	16,890 71
H. McGonigle,	"	"	"	1873	8,151 42
Same,	"	"	"	1874	1,651 89
Same,	"	"	"	1875	1,761 93
Same,	"	"	"	1876	1,917 45
Same,	"	"	"	1877	1,871 27
Same,	"	"	"	1878	1,813 46
Total tax levied					88,647 08

Summary.

Tax collected on account of M. & M. R. R. fund from the year 1867 to 1878, inclusive, less commissions.

G. W. Fulton, collector,	1867		6,498 51
Same, "	" 1868		8,996 08
H. R. Parsons,	" 1869		8,487 20
Same,	" 1870		9,086 29
Same,	" 1871		14,502 00
Same,	" 1872		15,821 68
H. McGunigle,	" 1873		8,006 01
Same,	" 1874		1,948 94
Same,	" 1875		1,576 01
Same,	" 1876		1,778 14
Same,	" 1877		1,781 47
Same,	" 1878		1,695 31
J. Winterbottom,	" 1878		76 89
Total collections, less commissions			80,254 53
G. W. Fulton's commissions		1,132 32	
H. R. Parson's "		2,390 78	
H. McGunigle's "		397 27	
John Winterbottom's commissions		3 20	
Total commissions			3,923 57
Total tax collected, including commissions			84,178 10
Receipts—Fulton, Reid & Wirt			262 26
Erroneous assessments			627 06
Delinquent, uncollected			3,579 66
Total tax levied			88,647 08

Summary.

Amount due M. & M. R. R. fund from Geo. W. Fulton, collector	15,494 59
Amount paid to treasurer	12,494 59
Amount paid to J. A. Agnew by order of court	3,000 00
	15,494 59

Amount due fund from H. R. Parsons, collector	47,897 17
Amount paid to treasurer	48,297 17
Overpaid April 3rd, 1871	400 00
Am't due from Henry McGunigle, collector	16,785 88
Amount paid treasurer	16,785 88
Amount due from John Winterbottom, collector.	76 89
Amount paid treasurer	76 89
Total due from collectors	80,254 53
Treasurer's receipts from collectors	77,654 53
Clerk's receipt from Fulton	3,000 00
Receipts from interest deposits and loans	129 27
Receipts from other sources	8,204 80
Total receipts	88,988 60

Continuation of Summary.

Paid on bonds and coupons by treasurer	27,353 96
" " " " by J. A. Agnew, cl'k.	8,470 89
Paid on bonds and coupons by Plummer	1,200 00
Paid on bonds and coupons by J. B. Poage	304 50
Paid on bonds and coupons by E. Rinehart, cl'k	30,221 00
Returned to treasury by J. C. Agnew	125 00
" " " J. B. Poage	190 50
" " " E. Rinehart	2,160 00
Paid on judgments, interest and costs	7,956 33
Paid on exchange	27 30
Clerk's fees and costs	1,262 88
P. B. Linville, custody of bonds	300 00
To reimburse county revenue fund	900 00
Transferred to county revenue fund	4,400 00
Bridges built, Fink and Parsons	325 00
Interest on due bill of county	24 38
Lawyers' fees and expenses	778 00
To pay loan from swamp-land fund	473 14
Loan to G. W. Fulton	1,500 00
Note	24 39
U. S. marshal on execution	342 00
Axel note	52 82
Balance on hand	596 51
	88,988 60

Due this fund from county revenue fund	700 00
Due H. R. P. Parsons from this fund	400 00"

The above statements were published by order of the county court, as shown by evidence.

Order of Court Allowing Frost's Account, Allowed by County Court.

STATE OF MISSOURI, } ss:
County of Knox, }

August Term, 1879.

In the county court of said county, on the 27th day of August, 1879, the following, among other, proceedings were had, viz:

Ordered by the court that the account of Griffin Frost be allowed in sum of $59.20 for printing for Knox county. Warrant ordered on contingent fund.

STATE OF MISSOURI, } ss:
County of Knox, }

I, F. M. Miller, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, this the 2nd day of March, 1888.

F. M. MILLER,
Clerk County Court.

STATE OF MISSOURI, } ss:
County of Knox, }

February Term, 1880.

In the county court of said county, on the 10th day of February, 1880, the following, among other, proceedings were had, viz:

Ordered by the court that the financial exhibit of Knox county be published in Edina Sentinel and Knox County Democrat, and that the same be paid for at rate of 40c. per square.

STATE OF MISSOURI, } ss:
County of Knox, }

I, F. M. Miller, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, this 2nd day of March, 1888.

F. M. MILLER,
Clerk County Court.

STATE OF MISSOURI, } ss:
County of Knox, }

May Term, 1880.

In the county court of said county, on the 30th day of June, 1880, the following, among other, proceedings were had, viz:

Ordered by the court that Griffin Frost be allowed the sum of $85.75, printing for the county, and warrant issue on contingent fund.

STATE OF MISSOURI, } ss:
County of Knox, }

I, F. M. Miller, clerk of the county court in and for the said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, this 2nd day of March, 1888.

F. M. MILLER,
Clerk County Court.

It was then agreed by counsel that the Macon county case (41 Mo., p. 453) was decided by the supreme court and published about October, 1867, and that the Knox county court,

under authority of that case, subsequently subscribed for and issued, without any vote, $84,000 of bonds additional to the first $100,000 issued under the order of March 12, 1867, and that the total outstanding bonds of the county at the time of the trial amounted to $167,300.

The defendant below then read the depositions of Sylvester Shultz, a judge of the county court when the bonds were issued, tending to show that the subscription was made without regard to the vote and only by authority of the special charter. The testimony of several citizens of the county was taken to show their impressions and belief that the subscriptions were all made regardless of the vote of the people.

The case was tried by a jury, under the following instructions of the court, to wit:

"*Charge to the Jury.*

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

NINTH NATIONAL BANK OF NEW YORK
vs.
KNOX COUNTY, MISSOURI.

THAYER, *D. J.:*

GENTLEMEN OF THE JURY: The case which you are to determine (as you are aware) is an action on certain bonds and coupons issued by Knox county.

It stands admitted that the bonds and coupons in suit were executed and put in circulation by Knox county, so that you will take that fact as conceded.

The controversy, so far as you are concerned, arises over the question whether the bonds in suit were issued in pursuance of a power conferred on the county by the 13th section of the charter of the Missouri & Mississippi R. R. Co., or by virtue of the 17th section of the general railroad law of the State which was in force on May 13th, 1867, the day the county court ordered the issuance of the bonds.

I will read you the two sections last referred to. Section 13 of the railroad charter is as follows: "It shall be lawful for the corporate authorities of any city or town, the county

court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor and levy a tax to pay the same not to exceed one-twentieth of one per cent. upon the assessed value of the taxable property for each year."

Section 17 of the general railroad law is in the following language: "It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town to take stock for such county, city, or town in or loan the credit thereof to any railroad company duly organized under this or any other law of the State, provided that two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent to such subscription."

You will observe, gentlemen, that here are two different statutes, under either one of which, or under, both the county court of Knox county might lawfully issue bonds in aid of the building of a railroad through the county. Acting under one statute, the county court could issue bonds of its own motion without a popular vote; acting under the other, a vote of the people was necessary to validate the issue.

Now, the main question which you must determine in this case is whether the county court of Knox county issued the bonds in suit pursuant to the power conferred on it by section 13 of the railroad charter and without any reference to a popular vote, or whether the court issued the bonds in obedience to a popular vote and because more than two-thirds of those voting on the proposition favored an issuance of bonds.

If the evidence in this case satisfies you that in issuing the bonds now sued on the county court of Knox county intended to and did act solely in pursuance of the power conferred on it by the 13th section of the railroad charter which I have read to you and without reference to any authority conferred by a vote of the people, then you will answer the 1st question submitted to you in the affirmative and you will answer the 2nd question in the negative, and you may in that event answer the 3rd and 4th interrogatories according as you find the fact to be.

The questions submitted to you are as follows:

First. Were the bonds sued upon in this case issued by the county court of Knox county solely in pursuance of power

conferred by the 13th section of the Missouri and Mississippi railroad charter?

Second. In issuing the bonds sued upon did the county court of Knox county intend to issue the same pursuant to power conferred by section 17 of the general railroad law in force on May 13th, 1867, and in accordance witn a vote of the people of Knox county authorizing such issue?

Third. Was an election held in Knox county, Missouri, previous to the issue of the bonds in suit to authorize a subscription of one hundred thousand dollars to the stock of a railroad corporation running on the line of the Missouri & Mississippi railroad as projected?

Fourth. Did two-thirds of the persons voting at such election vote in favor of such subscription and the issuance of bonds to pay the same?

On the other hand, if you find that the proposition embraced in the two orders of the county court of Knox county of date February 6th, 1867, and March 4th, 1867, was submitted to the voters of the county at an election held for that purpose; that more than $\frac{2}{3}$ of those voting at such election voted in favor of the proposition; and if you find that the county court subscribed to stock in the Missouri and Mississippi Railroad Company and issued the bonds in suit in pursuance of power conferred by such vote, and that the projected route of said railroad was on either line or route mentioned in said orders, then you will answer question No. 1 in the negative and questions Nos. 2, 3, and 4 in the affirmative.

In this connection I will further add, gentlemen, that if you find from the evidence that in issuing the bonds in suit the county court acted both in pursuance of power conferred by the railroad charter in question and also in reliance upon a popular vote previously taken, whereat more than $\frac{2}{3}$ of those voting favored a subscription and the issuance of bonds to pay for the same, then and in that event you will answer the first question in the negative and the 2nd, 3rd, and 4th questions in the affirmative.

It was competent for the county court to rely and act upon both the power conferred by the railroad charter and upon power derived from the general railroad law and a popular vote taken in pursuance of the same. Such action on the part of the county judges would not be inconsistent. They

might well invoke the aid of any and all laws that were supposed to confer power on the county court to make the subscription in question or that might confer such power, and if they did so act with reference to and relying upon both said laws, then, although the judges may have had doubts of the validity of the election, the issue of bonds was not made solely under the railroad charter, and you should answer the 1st question in the negative and the 2d, 3rd, and 4th questions in the affirmative, provided it also appears that an election was held as before stated and that more than ⅔ of those voting thereat favored the subscription.

In the course of the trial something has been said respecting the form and validity of the two orders of the county court of Knox county of date February 6th and March 4th, 1867, which have been read in evidence and which provided for the submission of a certain proposition to the voters of Knox county.

With reference to the orders in question I will say that they are good and sufficient in law, although no particular railroad corporation is mentioned in such orders. If a proposition such as is contained in those orders was submitted to a vote of the people at an election called for that purpose and more than ⅔ of all the persons voting at the election voted in favor of the proposition, then such vote was sufficient in law to authorize the county court to subscribe for stock in the Missouri and Mississippi railroad and to issue the bonds of the county in payment therefor, provided the route of the Missouri and Mississippi railroad passed through Knox county on either line indicated in said order.

That is to say, gentlemen, it was competent for the people of the county to give the county court a general power to subscribe to the stock of any railroad that might construct a railroad through the county on either one of several prescribed routes. It was not necessary that the name of the corporation in which it was proposed to subscribe stock should be specified in the proposition submitted to the voters, and the fact that it was not specified does not impair the validity of the orders, and it does not impair the validity of any action which the county court may have taken on the faith of an election held under the same.

I will furthermore say, gentlemen, that the fact that there were over 1,000 registered voters in Knox county when the election was held, and that 510 votes only were cast in favor

of issuing bonds, did not impair the validity of the election or the bonds. The law only required that ⅔ of all who voted at the election should vote in favor of an issue of bonds.

I will also say that the fact that the election took place within less than five weeks after March 4, 1867, when the first order for an election was modified, and that five weeks' notice was not given after that day, did not impair the validity of the election or the bonds; therefore, if you find that in point of fact the county court acted in reliance upon the vote of the people in issuing the bonds, then the validity of the bonds was not affected or impaired by reason of any of the objections urged by counsel against the validity of the election or against the manner in which the vote was canvassed.

Now, gentlemen, the burden of showing that the county court intended to issue the bonds under authority conferred by a vote of the people or in part reliance thereon rests upon the plaintiff because it has averred that they were so issued, and it is its duty to establish the fact so averred.

In arriving at a conclusion upon the issues submitted to you as to which law the county court intended to act under, you are privileged to consider all the facts and circumstances of the case as developed by the testimony.

You may look at the recital contained in the bonds (which, in my opinion, is not conclusive on the question at issue), but you will give the recital such weight as you think it deserves.

You will also consider the subsequent action of the county court in the matter of levying more than one-twentieth of one per cent. per annum for a period of several years to pay interest on the bonds.

You may also consider any entries or recitals appearing on the bond register of the county with reference to the bonds in suit and any statements which the county court of Knox county caused to be published concerning the bonds.

From all such documents as are in evidence, as well as from the oral testimony, you will determine what was the true intent of the county court in issuing the bonds—that is to say, whether they intended to act exclusively under the railroad charter or under authority conferred by a popular vote or under both powers.

In conclusion, gentlemen, I ask you to take this case and dispose of the issue of fact which I have submitted to you

fairly and impartially, without prejudice for or bias against either party. It is your sworn duty as jurors to decide this case with the same degree of fairness that you would decide a controversy between two private individuals. I have confidence that you will endeavor to determine the issue in the case in the same spirit of fairness and justice to both parties that I feel sure would actuate you if the suit was between two natural persons.

You will return a general verdict in favor of plaintiff on the bonds and coupons, and you will also answer the special issues of fact submitted to you."

The issues were all found by the jury for the plaintiff and judgment rendered for the bonds.

Motions for a new trial and in arrest of judgment being overruled, the case is brought here by writ of error.

The exceptions taken by the defendant below to the instructions of the court appear in the record on pages 119 to 122, inclusive.

BRIEF.

There is no controversy as to the validity of the bonds sued on. If the bonds were justified and authorized by a vote of the people, then the county court must levy a sufficient tax to pay the bonds in full and without limitation. If, on the contrary, the county court intended in making the subscription and issuing the bonds to disregard the vote and to act on their own authority entirely, as conferred by the 13th section of the special charter of the company, then the court is limited in its levies of taxation to pay the bonds to one-twentieth of one per cent. per annum on the assessed valuation of property in the county, which pays to the creditors less than one per cent. per annum on the interest of the debt and will never reduce any part of the principal.

It is true that this court has repeatedly held that for any excess of debt over and above that paid by the special tax the creditor may take his warrant against the general fund of the county or the general county revenue levied to defray county expenses.

U. S. *ex rel.* Johnston *vs.* Clark County Court 96 U. S., 211.

Co. C't of Macon *vs.* Huidekoper, 99 U. S., 592.

U. S. *ex rel.* Harshman *vs.* Knox Co. C't, 109 U. S., 229.

Macon Co. C't *vs.* Huidekoper, 134 U. S., 332.

But the remedy conferred by these rulings has been rendered wholly ineffectual by the fraudulent and corrupt administration of county affairs. No money ever enters the county treasury. The county's debts are paid wholly in warrants, and the county's expenses, increased by the discount on county warrants, annually absorb the constitu-

tional limit of county taxation, and hence the warrant of the bond creditor is never reached.

The great question, therefore, in the case is this: Was the subscription of May 13, 1867, for one hundred thousand dollars, made by the county court under the authority of the vote of the people as taken on the 12th of March preceding or was it made in total disregard of that vote?

In support of the affirmative of this question the defendant in error submits the following points:

I.

That between 1861 and the autumn of 1867 the legislation of the State of Missouri was such that no county court in the State would have felt authorized to issue bonds to railroad companies without a vote of the people. The Macon county case was only returnable to the supreme court at its October term (the third Tuesday of that month), in 1867, which for the first time opened the door to subscriptions by county courts in cases where the charters antedated the constitution, and at that time the Knox county subscription had not only been made and perfected, but a large number of the bonds in controversy had been already issued. (Record, p. 63.)

II.

For seven years after the issue of these bonds—1868 to 1874, both inclusive—the county court levied and the people without question paid, the tax necessary to take up the interest coupons in full, and also redeemed part of the bonds themselves without discount. (Record, pp. 30, 53, and 59.)

It was not until the supreme court of Missouri, in May, 1874, had held in the Shortridge case, coming from Macon county, where there was no pretense of an election, that the thirteenth section of the Missouri and Mississippi charter

limited tax levies to one-twentieth of one per cent., that the county court of Knox county concluded to change its levy to one-twentieth of one per cent.—an amount scarcely sufficient to pay one per cent. on its bonds. (Record, p. 30.)

III.

When the bonds in controversy were issued the statute laws of Missouri, as they still do, made it obligatory on each county court to keep on record in the county clerk's office a bond register or statement of the debts due by the county.

A copy of that statement, kept as a county record and open to public inspection, appears on pages 59 and 60 of the record of the case, in which it is stated that "one hundred thousand dollars of the bonds issued to the Missouri and Mississippi Railroad Company, ordered by an election held 12th March, 1867, official return being 510 votes for and 98 against, under an act of the legislature of Missouri entitled 'An act to incorporate the Missouri and Mississippi Railroad Company,' approved February 20, 1865. All the bonds issued to the Missouri and Mississippi Railroad Company were issued under authority of this act."

IV.

The laws of Missouri at that time required, and ever since have required, that a statement of the annual receipts and expenditures of the county, together with a statement or list of the debt, such as may furnish to the people a full exhibit of their financial condition and the requirements of taxation, shall be annually published in a newspaper of the county.

A copy of that publication from the *Knox County Democrat*, and published by order of the county court of Knox county, appears in the Record at page 52. It gives a "statement of the bonded indebtedness of Knox county on account of

the subscription to the Missouri and Mississippi railroad, with the amount of tax levied and collected and the receipts and expenditures from May 13, 1867, to June 10, 1879."

The precise character of the bonds is set forth in this publication in the following words: "Under act of General Assembly approved February 29, 1875 (misprint for 1865), an election was held March 12, 1867, upon the proposition to subscribe $100,000 to the Missouri and Mississippi Railroad Company, which resulted in 510 votes for and 98 against said subscription. In pursuance of said election an order of the county court was made May 13, 1867, subscribing to said railroad company $100,000 in 7 per cent. 10-year bonds at par for work done in Knox county on the sworn estimates of the engineers of said road."

The exhibit thus published proceeds to show that the remaining bonds were issued not under a vote but by authority only of the special charter. These subsequent subscriptions were not made until the voted subscription had been exhausted, nor until the Macon county case had been decided and published, under which the municipal authorities were authorized to subscribe without a vote.

V.

On the trial of this case in the court below the following special issues were submitted to the jury:

"1st. Were the bonds sued on in this case issued by the county court of Knox county solely in pursuance of power conferred by the 13th section of the Missouri and Mississippi railroad charter?

"2d. In issuing the bonds sued on, did the county court of Knox county intend to issue the same pursuant to power conferred by section 17 of the general railroad law in force on May 13, 1867, and in accordance with a vote of the people of Knox county authorizing such issue?

"3d. Was an election held in Knox county, Missouri, previous to the issue of the bonds in suit to authorize a sub-

scription of $100,000 to the stock of a railroad corporation running on the line of the Missouri and Mississippi railroad as projected?

"4th. Did two-thirds of the persons voting at such election vote in favor of such subscription and the issuance of bonds to pay the same?"

These issues embraced all the facts put in controversy by the pleadings.

To the first the jury responded in the negative, and affimatively to the second, third, and fourth.

The instructions of the court to the jury were, in no manner, prejudicial to the plaintiff. If error were committed at all, it was against the rights of defendant, and plaintiff in error has no cause to complain.

ARGUMENT.

On the first point above made the defendant submits the following argument:

In 1853 the Missouri legislature passed the first general law providing for the formation of railroad companies. Previous to that time all such companies had been authorized by special acts (Session Acts 1852–'3, p. 121). From the adoption of this general law (February 24, 1853) to July 4, 1865, numerous railroad companies were organized in the State, both under this general act and by special acts of the legislature. A new constitution, adopted on July 4, 1865, prohibited all further special acts for that purpose, and thereafter all such companies were required to be organized under general laws only.

Sections 29 and 30 of this general railroad law of 1853 (p. 135–'6) made it lawful for the county court of any county and the city council of any city in the State to subscribe to the capital stock of any railroad company organized either under this general law or under any special law of the State, and in case of subscription the authorities could issue bonds or levy taxes to pay such subscription, and if bonds were issued full authority was given to levy taxes to pay the same. Under this first act the municipal authorities were fully empowered to subscribe stock and issue bonds without any vote of the people whatever, but the twenty-ninth section thereof authorized such authorities "for information" to "cause an election to be held to ascertain the sense of the tax-payers of such county or city as to such subscription," &c.

This law was retained *in eadem verba* in the revision of 1855.

On January 14, 1860, and before the said constitution was adopted, the legislature changed the words "may for infor-

mation" into "shall for information" (Session Acts 1859–'60, p. 80), and on March 23, 1861, another amendment to the law was passed making it the duty of such authorities to submit the question of subscription to a vote of "the resident voters," and if a majority voted in favor of it, then the authorities "shall subscribe," etc.; and this act further declared that "it shall *not be lawful* for the county court of any county to subscribe to the capital stock of any railroad company unless the same has been voted for by a majority of the resident voters," etc. (Session Acts 1860–'1, p. 60).

In this condition the law remained till the adoption of a new constitution, on July 4, 1865, which provided that "the General Assembly shall not authorize any county, city, or town to become a stockholder in or to loan its credit to any company, association, or corporation unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election, to be held therein, shall assent thereto."

Art. 2, sec. 14, Constitution of 1865, 1 Wagner, p. 62.

Immediately after the adoption of this constitution a revision of the laws was made conforming the statutes thereto, and accordingly the seventeenth section of the general railroad laws of 1865 was so framed as to authorize the subscription of stock "to any railroad company duly organized under this or any other law of the State, *provided* that *two-thirds* of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent to such subscription;" and the eighteenth section provided for the issue of bonds and the levy of a sufficient tax to pay the same.

See 1 Wagner Stat., p. 305, and General Stats. Mo., 1865, p. 338, § 7.

It may be safely asserted that after the passage of the act of March 23, 1861, absolutely prohibiting the issue of bonds

except upon a vote of the people, no railroad subscription was ever made by any municipality in the State without such vote to any company whose charter was adopted subsequently to that date (1861), whether the company was organized under general or special act.

On February 20, 1865, only a few months before the adoption of the State constitution referred to, the legislature had passed the act to charter "The Missiouri and Mississippi Railroad Company," the same company to which the subscription in this case was made. It is true that the thirteenth section of this charter authorized any county court to subscribe stock and issue bonds therefor, and to levy a tax to pay *the same* not exceeding one-twentieth of one per cent., etc.; but there was no special exemption from the act of 1861. On the adoption of the constitution, July 4, 1865, and the revision of the law thereunder, the act of March 23, 1861, was substantially continued in the revision of 1865. The charter of the Missouri and Mississippi Railroad Company then antedated the constitution and the law passed in pursuance thereof, and now, for the first time, it was urged in some quarters that the older was not affected by the later law.

The Macon county court was now induced to subscribe stock to this same company, with a view only of testing the constitutionality of a subscription to a previous charter without taking a vote of the people. The Macon court therefore made a subscription, and refused to issue the bonds, when a proceeding by mandamus was instituted to test the question. The supreme court of Missouri simply decided that the constitution had no "retroactive effect on statutes passed before its adoption," and thereupon ordered the bonds to be issued. Without such an opinion the bonds could not have been sold.

See State *vs.* Macon County Court, 41 Mo., 453.

This ruling was followed in later years by numerous cases in the supreme court of Missouri, and was accepted by this Court as the settled law of that State.

State *vs.* Nodaway Co., 47 Mo., 349 (1871).
State *vs,* Sullivan Co., 51 Mo., 522 (1873).
County of Callaway *vs.* Foster, 93 U. S., 570.
County of Scotland *vs.* Thomas, 94 U. S., 688.
County of Henry *vs.* Nicolay, 95 U. S., 619.
County of Ray *vs.* Vansycle, 96 U. S., 675.
County of Ralls *vs.* Douglas, 105 U. S., 728, and other cases cited.

This Macon county case was not decided until the October term of the supreme court of Missouri in 1867. The Knox county subscription for $100,000 was made long previous to this decision, to-wit, on May 13, 1867, and not till after an election had been held on March 12, 1867, in pursuance of an order of the county court made for that purpose on the 6th of February previous. The presiding justice of the county court, who ordered the election, who made the subscription, and who signed the bonds, was a witness in this case, and he says positively that the first subscription of $100,000 was made "under a vote of the people of that county at an election prior to that time;" that this subscription was made "to carry out that vote." He says, further, that the court "would not have taken the responsibility" at that time of subscribing and issuing bonds "without a vote of the people." (Rec., pp. 33, 34, 35, 36, 37, 43, 48, 49.)

It is true that in a short time after this subscription of the first $100,000 the Macon county case was published, and thereafter, in 1869 and 1870, two other subscriptions were made without a vote of the people, these additional subscriptions being necessary to complete the grade of the road in Knox county.

It is, therefore, quite certain that before the promulgation of the Macon case the county court of Knox county believed that it had no power to subscribe to the stock of this company unless authorized by a vote of the people. It is an established fact that before the court subscribed the stock such a vote *was* taken, and more than two-thirds of the qualified voters of the county authorized the court to subscribe the $100,000. It is also certain that the subscription afterwards made was in perfect conformity to the previous order of the court on which the people had voted. The bond recites that it was issued "under and pursuant to an order of the county court of Knox county for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri entitled 'An act to incorporate the Missouri and Mississippi Railroad Company,' approved February 20, 1865." Suppose that the bond had, in addition to its recitals above quoted, contained a further recital as follows, to-wit, "and authorized by a vote of the people," would there be any contradiction or incongruity between such recitals? In my judgment such recitals would not only have been consistent with each other, but if used would have given full expression to the law and the facts in the case. It would have carried out the intention of the county court and the people of the county and would have unquestionably made the bond what it is now claimed to be by the defendant in error. If a vote had been recited in the bond, would not such recital have worked an *estoppel* against the county as to that fact?

The bonds to be valid at all must have been authorized by the provisions of some railroad charter—some charter created under general or special law. In this case it is perfectly certain that the only authority is the act to incorporate the Missouri and Mississippi Railroad Company, approved February 20, 1865. The recital of the bond in that

respect is absolutely true. That charter gives the only authority for the existence of the bond. Take away this act and the bond falls as absolutely worthless. It is a total misapprehension of the meaning of the seventeenth section of the general railroad law of 1865 to suppose that the power to issue bonds is derived from it alone. There must be a railroad company in existence organized under State law authorized to receive the bonds. This seventeenth section (1 Wagner, 305) provides that county courts may subscribe stock on the condition of a two-thirds vote of the people to *any* railroad company, whether organized under the general law or by special act. In taking the vote it was customary, of course, to name some company or the line of some company, and I admit that when some particular company was designated in the order of election a recital in the bonds when issued that they were authorized by the seventeenth section of the general railroad law would be sufficient to make the bond good. But it becomes good only by virtue of the fact that there is or was in fact a railroad company in existence authorized to receive the bonds as such. That is certain in the law which can be made certain. If a bond should show on its face that it was issued under the seventeenth section of the general statute, it would still be necessary to show the additional fact that it was issued to a company authorized to receive municipal subscriptions. By examining the order of election or the order to issue the bonds we might find the company named or sufficiently described to which the subscription was to be made. When we have ascertained the company, the next inquiry is necessarily, is this company authorized to receive the subscription? Instead of a railroad company it may turn out to be a manufacturing company, or possibly a railroad company not organized or created by Missouri law. If so, the mere vote of the people does not make the bond valid. At last, then, the *authority* to issue the bond comes *not* from the *vote* of

the people, but from the *act* of incorporation of the company to which the subscription is made and to which the bonds are issued. The vote of the people determines only the mode of paying the bond.

In this case the authority to issue the bond resides in the Missouri and Mississippi charter passed by the legislature February 20, 1865. If the people voted for the issue the only consequence or effect produced thereby is to provide other and greater means for the payment of the bonds. If there were a vote, then the levy must be for enough to pay the bonds in full, for such are the requirements of the eighteenth and twenty-first sections of the general law touching bonds issued to pay subscriptions authorized under a vote of the people.

Whether there was a vote or not in this case, it is certain that the legal authority to issue the bond is to be found in the charter of the Missouri and Mississippi company. The recital to that effect is true, and I am at a loss to understand how a recital of one truth can be inconsistent with another truth existing in the case.

This view of the case is strengthened by the facts existing when the county court made the order of election in February, 1867. Two projects of railroad improvement were before the people of Knox county—one was a line of road beginning at West Quincy, in Marion county, Mo., and running almost due west through Knox county. This was organized under the general law and was called the Quincy, Missouri and Pacific Company. The other was the road contemplated by the Missouri and Mississippi Company, beginning at Alexandria, Mo., near Keokuk, Iowa, and running thence to Macon City, Mo., and passing through Knox county in a northeast and southwest direction.

The order of election did not designate by name either company, but set forth both routes covered by the charters, leaving the county court to select the company giving the best hope of success. This was a justifiable proceeding, as

established by the supreme court of Missouri, no less than by this Court in numerous decisions.

See Ranney *vs.* Baeder, 50 Mo., 600.
Commissioners *vs.* Thayer, 94 U. S., 631.
Scipio *vs.* Wright, 101 U. S., 665, and other cases.

In all such cases the discretion of the court is to be exercised in selecting some company having chartered privileges, filling the requirements of the vote.

Whether the company selected be such a company or not is a question to be settled by the record and by other evidence in the case. The court in this case, having selected the Missouri and Mississippi Company, made the subscription to that company in almost the precise words of the order upon which the people had voted. Having subscribed to that company, it was natural that in the issue of the bonds the county authorities should have stated that they were issued by virtue or by authority of a subscription to that company.

The only thing needed to establish by *estoppel* all we claim in this case is the additional recital that it was authorized by a vote of the people. In the absence of such recital in the bond itself, can the fact be shown *aliunde*, either by record of the county court or by oral evidence, or by both?

I assert that if this bond had been issued without any recital whatever of authority therefor, the authority could well be shown by evidence outside of the bond itself. Whether the bond was issued with a false recital or with no recital at all is immaterial to the holder if he can show that the court possessed power to issue it at all.

Smith *vs.* Clark Co., 54 Mo., 71.
Flagg *vs.* City of Palmyra, 36 Mo., 440.

If he can show *aliunde* authority for its issue, why can he not show, as the plaintiff did in this case, that it was authorized by a vote of the people?

SECOND.

The county court issued the bonds, and in doing so acted as the agent of the county. Indeed, the court was *pro hac vice* the county. For seven years of the currency of the bonds the court levied, collected, and paid a tax which was clearly illegal and wrong, except on the theory that the bonds had been authorized by a vote of the people. These levies, repeated from year to year, while the bonds were being sold in the open market and while they were passing from hand to hand for value, constitute acts of *estoppel* against the county.

THIRD AND FOURTH.

The recitals in the bond register and in the statements of the county debt, published as required by law, in the same manner operate as *estoppels* against the county. Clearly the object of publishing the amount of the debt, coupled with the receipts and expenditures of the county, was to place before the people the amount and causes of taxation and to enable them to pass upon the conduct of their officials.

The fact whether an election had been held or not for any part of the bonds was not only an important, but an indispensable element of information to the people. The law made it the "duty" of the county court to make these exhibits. If money has been collected the statement must show "on what account" it was received; if paid out, the court must show "to what individuals and on what account paid;" if there be a public debt its "amount" must be stated. To state its amount implies that its rate of interest must also be stated. In no other way could the people be informed of the legitimate demands of taxation to be imposed upon them. Hence the recital of a vote of the people, for one hundred thousand dollars of bonds, made by the

county court in these records, was included in the positive duties enjoined by law. In no other way was it possible to communicate to the people the amount—*i. e.*, the extent—of the public debt and the annual demands upon them for paying the interest.

"The county court has the control and management of the property, real and personal, of the county. It is the agent of the county and has full power and may lawfully and of right do whatever is necessary to carry out the trusts reposed in it. A grant from the legislature investing the county court with power to do certain acts necessarily implies the power to use the fit and appropriate instruments to accomplish the objects sought to be obtained."

Han. & St. Jo. R. R. Co. *vs.* Marion Co., 36 Mo., 103–'4.

It may be argued again, as it was in the court below, that no *estoppel* can be created in this case unless the recital of election appeared in the bond itself. Such is not the law, and especially is it not the law in Missouri.

"At times this presumption of a compliance with the law on the part of the agents designated by the legislature seems to have been based on *estoppels*, such as recitals on the face of the bonds, the fact that the county or city had levied taxes to pay the interest on them, or had received in exchange for the bonds certificates of stock from the railroad companies."

Smith *vs.* Clark Co., 54 Mo., 74.

In H. & H. R. R. Co. *vs.* Marion Co., 36 Mo., 274 (1865), the only estoppel consisted of the receipt and possession of the certificate of stock. The court said:

"The county subscribed stock in a railroad enterprise. Like all other shareholders, it received a certificate of stock, and now retains and holds the same and continues to enjoy all the benefits derivable therefrom. * * * It would be grossly immoral and unjust to allow it to involve others in onerous engagements and then, after lapse of ten years' silent acquiescence, repudiate its obligation."

FIFTH.

a. All the facts in this case were submitted to a jury, and the findings were in favor of the defendant in error.

The trial court might well have instructed the jury that the county, by its own records, was estopped from denying a vote of the people in favor of the bonds in controversy; but the more conservative course was adopted and the question of election or no election was committed wholly to the jury. The burden of showing an election was by the court expressly placed on the defendant in error. The records were admitted in evidence, but only to receive such weight as the jury might give them.

The precise words of the court are as follows:

"From all such documents as are in evidence as well as from the oral testimony you will determine what was the true intent of the county court in issuing the bonds—that is to say, whether they intended to act exclusively under the railroad charter or under authority conferred by a popular vote, or under both powers."

b. It is contended by the plaintiff in error that the recital in the bond that it was issued to the Missouri and Mississippi Railroad Company is inconsistent with the claim of an election, and that defendant in error is precluded from so showing.

Such is not the ruling of this Court nor of the Missouri supreme Court.

In Comm'rs *vs.* January, 94 U. S., 202, this court held:

"It is true they (the bonds) refer to the wrong statute, but *falsa demonstratia non nocet.* The bad here does not hurt the good."

In Smith *vs.* Clark County, 54 Mo., 66, the court said:

"It is apparent from the agreed statement in this case that the main and important question is whether the court

had the authority to issue the bonds in question under the act of 1857, which was the charter of the company, or whether the *recitals* in the bonds that they were issued under the general statutes of 1855 were obligatory, and therefore that the failure to call an election which the recited act requires vitiates the bonds."

On this point the court is thus specific:

"But it is objected in this case that the bonds in controversy on their face purported to have been issued under the act of 1855, and that the holder is estopped from claiming that they were issued under the special act of 1857, which was the charter of the company. Whether the recital in these bonds would constitute an estoppel against the makers it is not important to inquire. If it were so, it would not follow that the purchaser or holder is bound. If he can show that the power existed, a false recital of it, however obligatory on the county or its agents, would not defeat its efficacy in the hands of a party in nowise concerned in the perpetration of the falsehood."

c. Another complaint is that in the order of election made on March 4, 1867 (Record, p. 27) the previous order of February 6, 1867, was changed and no public notice of this change was given to enable the people to vote understandingly on the 12th day of March. This objection is without force, because—

First. The change in the order is wholly immaterial. The second order makes Edina, the county-seat, a point on any line adopted, while the former order was substantially the same, and on the line chosen by the county court for its subscription Edina is expressly made a point in the first order.

Second. At the time of this vote (March 12, 1867), the laws of Missouri, touching special elections, left the questions of time and manner of notice in such cases entirely to the tribunal charged with the duty of calling them. A period of over five days' notice was required in no case, whereas in

this case there were eight days intervening after the amended order, and an advertised notice in all, of nearly five weeks.

Third. The question here is not whether the notice was sufficient or whether the election, as a fact, was good or bad. The proper inquiry is, did the county court by its own solemn records admit that the bonds were issued under authority of an election. These documents, whether accepted as absolute *estoppels* or admitted as persuasive evidence of the facts recited therein, have force and effect as admissions; and in such cases it is quite immaterial whether the admissions be true or false.

The supreme court of Missouri laid down the rule in Smith *vs.* Clark County, 54 Mo., 76:

"It may be that only a majority vote for the subscription when the law requires two-thirds; it may be that from the want of sufficient notice a mere fraction of the voters appear at the polls; it may be that hundreds of minors or other disqualified persons have voted, * * * yet the officers of the municipality are allowed to decide upon these questions, and their decision is held conclusive."

d. Another objection urged is that the certificate of the clerk of the county court, aided by two justices of the peace of Knox county, showing the result of the election is insufficient; that the vote should have been canvassed by the county court. The law in force in Missouri at the time of the election reads as follows:

"The clerk of each county court shall, within eight days after the close of each election, take to his assistance two justices of the peace of his county, or two justices of the county court, and examine and cast up the votes given to each candidate, and give to those having the highest number of votes a certificate of election." (Gen. St. 1865, p. 63, § 25.)

The county court adopted this certificate as correct, and placed it on its records, thereby accepting it as its own can-

vass of the vote and adding additional evidence that the subscription was based on the vote of the people.

In the case of U. S. *ex rel.* Harshman *vs.* Knox Co. Court, 122 U. S., 306, this Court considered a case in which a jury verdict in the United States circuit court, at St. Louis, found that this election had been legally held in Knox county, and that the subscription was made in pursuance thereof.

e. The last, and perhaps the least, important of the objections is that the election did not specify any particular company, but designated only the routes selected by the people and leaving it to the court to choose a company whose line answered the requirements of the vote. As already stated, this Court settled the question thus raised in—

Com'rs *vs.* Thayer, 94 U. S., 631.
Scipio *vs.* Wright., 101 U. S., 665.

And the supreme court of Missouri, in Ranney *vs.* Baeder (50 Mo., 600), settled it as the fixed policy of that State. In that case the vote was on a proposition to subscribe to some company "commencing at the city of Cape Girardeau, running in a southwest direction to some desirable point on the State line." In that case the subsequent subscription to the Cape Girardeau and State Line Railroad Company was upheld.

In the case at bar it is not pretended that the route of the company receiving the subscription did not in every particular fill the requirements of the order of the election, nor can it be pretended that the people in voting did not have in view the Missouri and Mississippi Railroad Company.

J. B. HENDERSON,
For Defendant in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 78.

KNOX COUNTY, PLAINTIFF IN ERROR,

vs.

NINTH NATIONAL BANK, DEFENDANT.

IN ERROR TO NORTHEN DIVISION OF EASTERN DISTRICT OF MISSOURI.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

J. B. HENDERSON,
Attorney.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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No. 78.

KNOX COUNTY, PLAINTIFF IN ERROR,

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In Reply to the Brief of Plaintiff in Error.

I.

The records of the county court were properly admitted, for the following reasons additional to those given in defendant's original brief:

1st. The interpretation of a contract by the parties themselves is not only competent, but of great weight in construing it.

Chicago *vs.* Sheldon, 9 Wall., 50.
Lowber *vs.* Bangs, 2 Wall., 728.
P., W. & B. R. R. Co. *vs.* Trimble, 10 Wall., 367.
Steinbach *vs.* Stewart, 11 Wall., 566.

2d. In construing contracts it is competent to look to all the circumstances connected with or explanatory of the transaction.

Merriam *vs.* U. S., 107 U. S., 437.
U. S. *vs.* Gibbons, 109 U. S., 200.
Ches. & Ohio Co. *vs.* Hill, 15 Wall., 94.

3d. The intention of parties to a contract may be inquired into and evidence tending to show such intention is competent.

Bradley *vs.* Packet Co., 13 Pet., 89.
Mauran *vs.* Bullens, 16 Pet., 528.
Chenango B. Co. *vs.* Binghampton B. Co., 3 Wall., 51.
Ches. & Ohio Co. *vs.* Hill, 15 Wall., 94.

4th. The bonds sued on are county bonds, and all acts of the county court performed within the law touching the character of the bonds issued come clearly within the agency of the court.

5th. In Bank U. S. *vs.* Dandridge, 12 Wheat., 70, this Court, through Story, justice, said: "In short, we think that the acts of artificial persons afford the same presumptions from acts done of what must have preceded them as matters of right or matters of duty."

II.

ESTOPPEL.

Susbsequent acts of a municipal corporation issuing bonds create an estoppel equally with contemporaneous acts.

In Pendleton County *vs.* Amy, 13 Wall., 297, this Court,

after referring to the many cases of *estoppel* previously decided, said:

"The *estoppel* in these cases was either by recitals in the bonds that the conditions precedent had been complied with or by the fact that the county *had subsequently levied taxes to pay interest on the bonds.* In the present case it does not appear in the pleadings whether or not the bonds contained any such recitals or whether the officers of the county have levied taxes to pay interest on them, or whether any interest has been paid. These grounds of *estoppel* do not exist. But if such acts and such recitals are sufficient to protect *bona fide* purchasers against an attempt to set up non-compliance with conditions attached to the grant of power to issue the bonds, it is not easy to see why the pleadings do not show an *estoppel* in this case. The county received in exchange for the bonds a certificate for the stock of the railroad company, which it held about seventeen years before the present suit was brought and which it still holds. Having exchanged the bonds for the stock, can it retain the proceeds of the exchange and assert against a purchaser of the bonds for value that though the legislature empowered it to make them and put them upon the market upon certain conditions, they were issued in disregard of the conditions? We think they cannot, and therefore that the third plea cannot be sustained."

Again:

"Where the officers of the corporation openly exercise powers affecting the interests of third persons which presuppose a delegated authority for the purpose, and other corporate acts *subsequently* performed show that the corporation must have contemplated the legal existence of such authority, the acts of such officers will be deemed rightful and the delegated authority will be presumed."

Marshall Co. *vs.* Schenck, 5 Wall., 772.

The Court, after enumerating the subsequent acts of ratification, the receipt of stock certificates, their exchange for

other securities, and the payment of taxes to pay the coupons, proceeds as follows:

"Examined in the light of these suggestions, it would be difficult to imagine a case where the rule that a subsequent ratification is as good as a previous authority can be more justly applicable than in the case under consideration."

Citing—

Johnson *vs.* Stark Co., 24 Ill., 90.
Keithsburg *vs.* Frick, 34 Ill., 421.
And others.

The only *estoppel* against the county in 36 Mo., 295, was the *subsequent* act of receiving a stock certificate after delivering the notes of the county to the company. The retention of the certificate was inconsistent with the theory of a loan, and stamped the obligations of the county as bonds instead of notes for a mere loan to the company.

III.

AS TO THE ELECTION.

First. The plaintiff here erroneously assumes that the burden rests on the defendant to show the election to be regular and in perfect compliance with the law.

The defendant showed an order of election in due form, a canvass of the votes by the legally constituted officers, the adoption and approval of that canvass into the records of the county court, the order to subscribe the precise amount thus authorized by vote, the issue of bonds thereon before the decision in the Macon case, when such issue was supposed to be a criminal offense in the absence of such authority, the admission of such election in repeated public acts of the county court, done, not *sua sponte*, but under the posi-

tive requirements of the statutes existing when the bonds were issued; and surely these acts are sufficient to place the question of election beyond dispute.

This precise question was settled by the supreme court of Missouri in 1863, when it said:

"But in the absence of actual notice (to the bondholders), we do not hold them bound to inquire whether an election had been held, * * * or as to the regularity of such an election, or the qualifications of the voters thereat, or whether the city of Palmyra had actually subscribed, * * * or whether such subscription was made by the proper officer or officers of the city."

Flagg *vs.* City of Palmyra, 33 Mo., 450.

Second. The law presumes that the acts of public officers are rightly performed.

"Acts done by the corporation which presuppose the existence of other acts to make them legally operative are presumptive proofs of the latter."

Bank *vs.* Dandridge, 12 Wheat., 70.

In the same case this Court said (Story J.): "If officers of the corporation openly exercise a power which presupposes a delegated authority for the purpose, and *other corporate acts* show that the corporation must have contemplated the legal existence of such authority, the acts of such officers will be deemed rightful and the delegated authority will be presumed. * * * In short, we think that the acts of artificial persons afford the same presumptions as the acts of natural persons. Each affords presumptions, from acts done, of what must have preceded them, as matters of right or matters of duty."

Third. It is urged by plaintiff that notice for five weeks in the *Missouri Watchman*, a weekly newspaper, was impossible in this case, and that therefore there was *no* election.

Neither proposition is correct. This precise question is decided in Haywood *vs.* Russell, 44 Mo., 252 (1869). The Court said: "The objection to the time of publication is not well taken. The statute requires that notice should be published for four weeks, and that the last insertion should be at least four weeks before the commencement of the term. If the first publication is for one week, surely the other three are for one week each, and it is only necessary that the last insertion—not the last week—should be four weeks before the term. The notice objected to was published in a weekly paper in four consecutive numbers, which makes four weeks. The objection assumes that the commencement of the publication should be eight weeks before the term, which is not required; nor is it required that the four weeks should end four weeks before the term. It is sufficient if it be for four weeks, and if the last insertion, which is the commencement of the fourth week, be four weeks before the commencement of the term."

No different ruling has ever been made by the supreme court of Missouri.

The case of State *vs.* Tucker, 32 Mo. Appeals, is urged as controlling. This latter decision was made only in 1888, twenty-odd years after the election in Knox county was held. It is not applicable to this case for several reasons:

1st. It gives construction to the local-option law, a general statute of the State, and not to an order of the county

court, in which the whole power of fixing the time of election and manner of notice was purely discretionary.

2d. The court of appeals is inferior in authority to the supreme court of the State, and when its opinions are in conflict with the higher court they are without authority.

3d. This decision was rendered in 1888–'9, and gives construction to an act of the legislature passed March 24, 1883. The bonds in controversy were issued in 1867 and 1868.

Fourth. Plaintiff urges that to get five weeks of notice the day of the order and the day of election must be included. There is no law to exclude either.

The State statute prescribes that "the construction of all *statutes* of this State shall be by the following additional rules:

"4th. The time within which an act shall be done shall be computed by excluding the first day and including the last," &c.

1st. The order of the county court is not a statute of the State, and

2d. The order of the county court did not fix or endeavor to fix a time within which an act shall be done.

3d. If the order was published on February 6th and the election was held on March 12th the time was thirty-five days.

The precise question here involved was decided in 32 Cal., 350.

The practice act of California required publication against

Co., 64 Mo., 170, decided in 1876, in not one of which was it intimated that the laws of the State or the constitutional provision of 1865 required more than two-thirds of those voting at the election to authorize the issue of bonds.

Hence this Court said: "That case (the Linn Co. case) is therefore to be considered as conclusive upon this question, as well as upon that which was directly considered and decided, and as a rule of State statutory and constitutional construction is binding upon us."

"The contract when made was valid by the constitution and laws of the State as then expounded by the highest State authorities, and no subsequent action by the legislature or the judiciary can impair its obligation."

Havemeyer *vs.* Iowa Co., 3 Wall., 294.
Olcott *vs.* Fond du Lac Co., 16 Wall., 678.

"All qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. Any other rule would be productive of the greatest inconvenience and ought not to be adopted unless the legislative will to that effect is clearly expressed."

Cass County *vs.* Johnson, 5 Otto, 360.

To the same effect see—

County of Davies *vs.* Huidekoper, 98 U. S., 98.
Douglas *vs.* Pike County, 101 U. S., 679.
Carroll Co. *vs.* Smith, 111 U. S., 556.

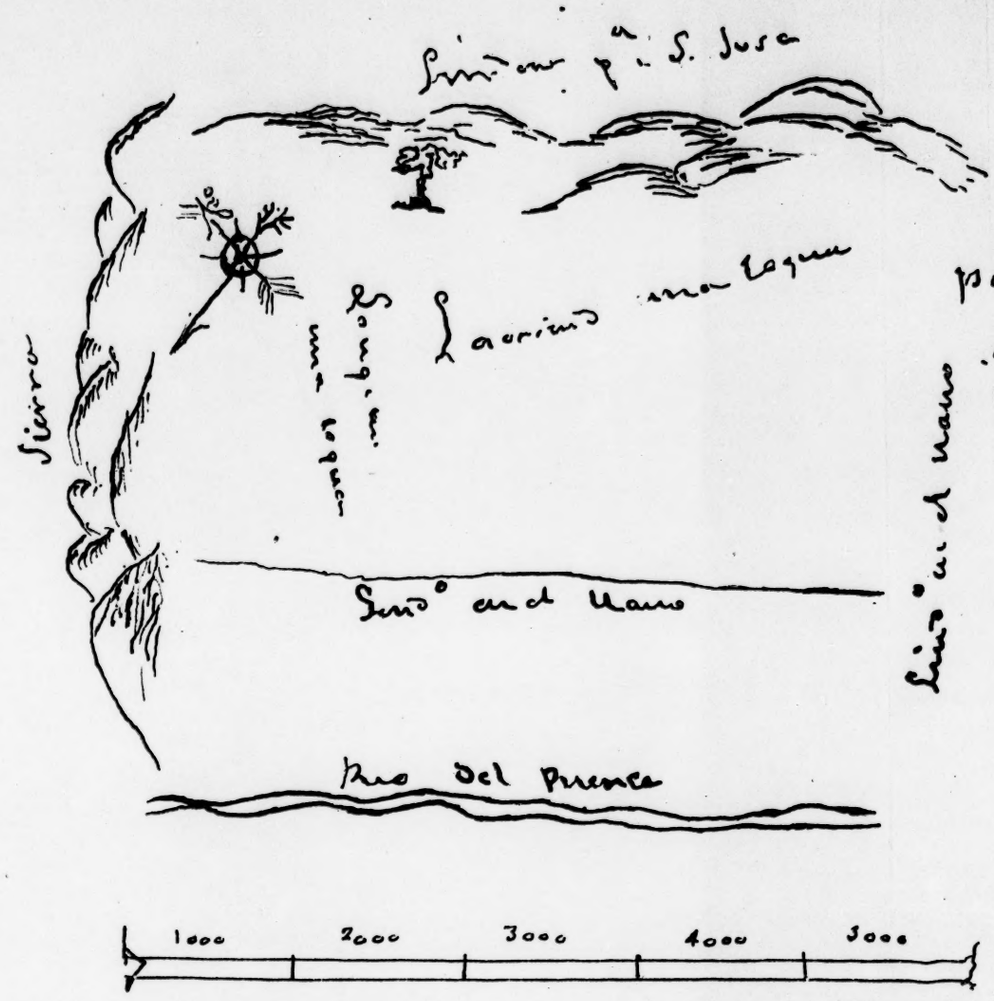
In Carroll Co. *vs.* Smith, 111 U. S., 566, the suit is on municipal bonds issued under the laws of Mississippi, where the constitutional provision is identical with that of Missouri and the law substantially the same. This Court reversed the Mississippi supreme court and said (Matthews, judge): "The assent of two-thirds of the qualified voters of the county,

at an election lawfully held for that purpose, to a proposed issue of municipal bonds intended by that instrument meant the vote of two-thirds of the qualified voters present and voting at such election in its favor, as determined by the official return of the result. The words 'qualified voters' as used in the constitution must be taken to mean not those qualified and entitled to vote, but those qualified and actually voting. In that connection a voter is one who votes, not one who, although qualified to vote, does not vote."

J. B. HENDERSON,
For Defendant

No. 1302.
U States
v.
S. P. R. R. Co
et al

p. 649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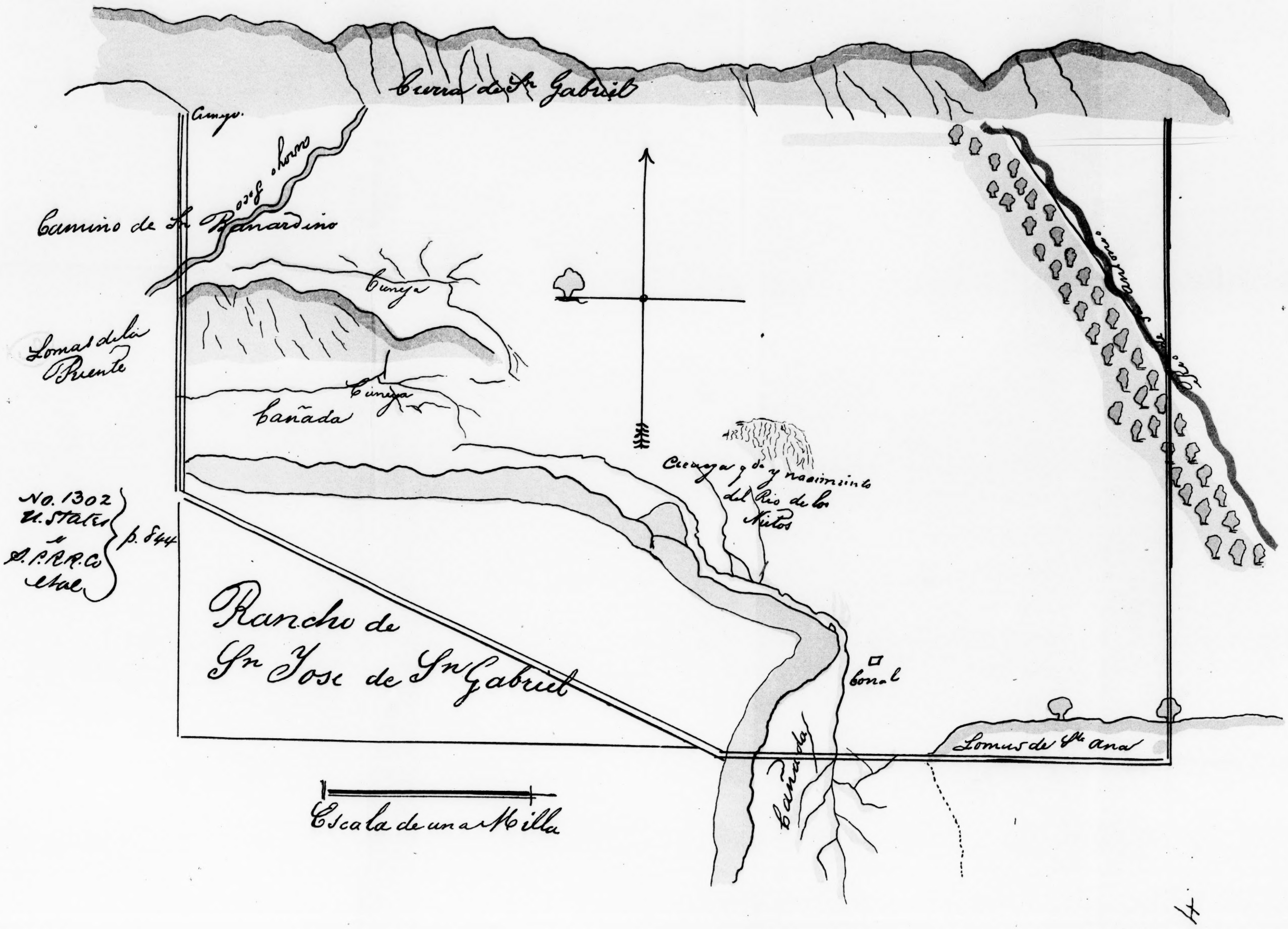
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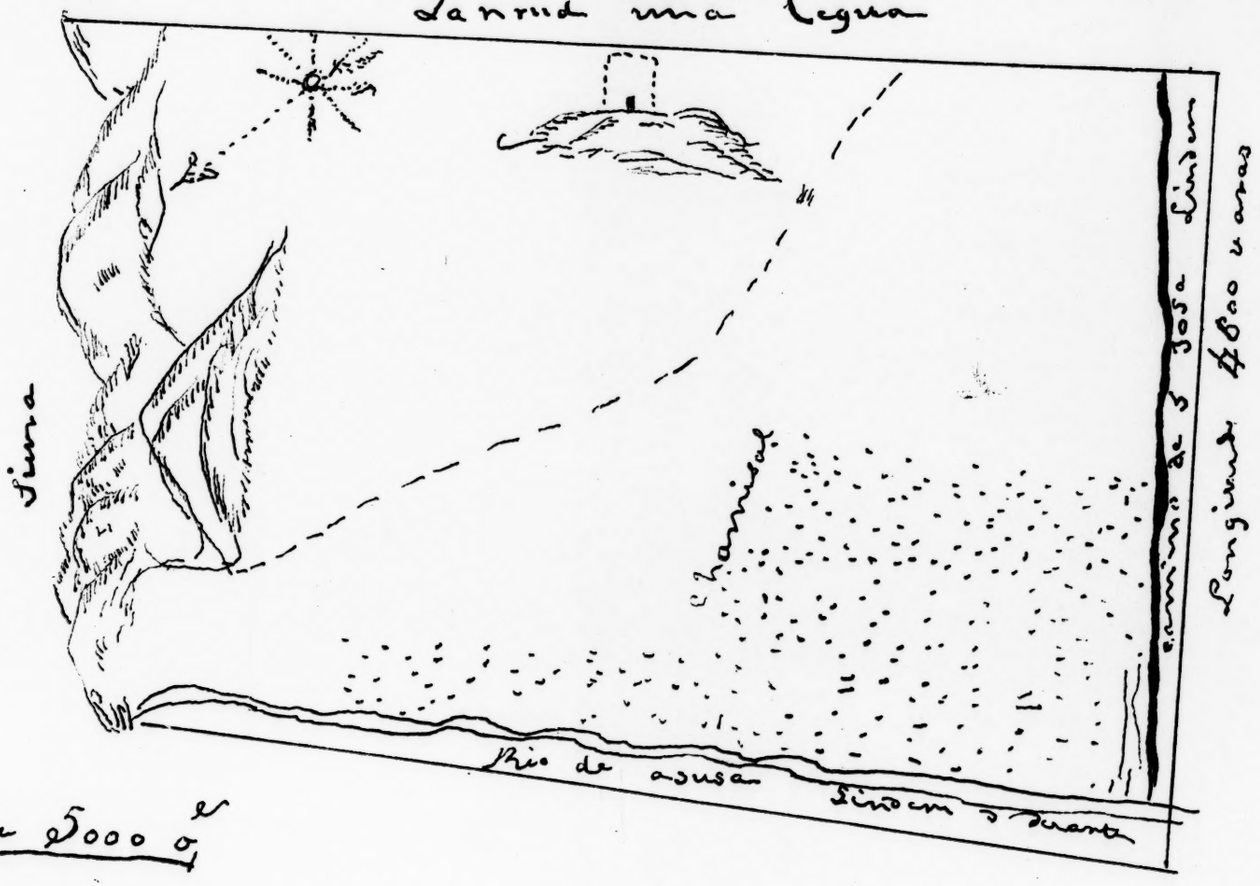
Rancho de Sn Jose de Sn Gabriel
Lomas de Sta Ana
Escala de una Milla
No. 1302
U. States
S. P. R. R. Co
etal
p. 844

4

Aumento de tierra Asusa

No. 1302
U. States
v.
S.P.R.R.Co
et al.
p. 853



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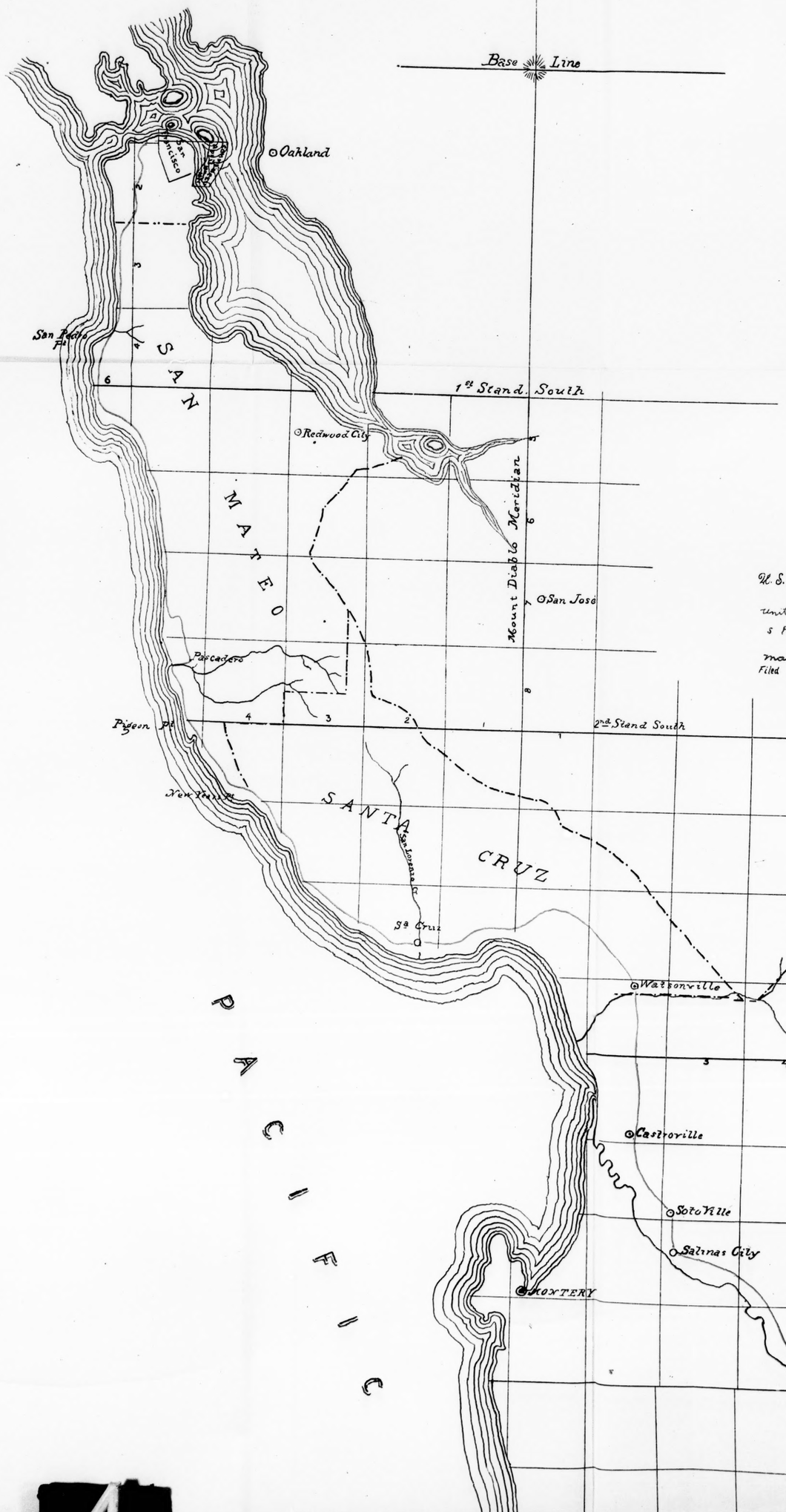
13.

No. 1302.
U States
v.
S.P.R.R.Co
et al.
p 877

MAP
of
ATLANTIC & PACIFIC RAIL ROAD
SAN FRANCISCO to SAN MIGUEL MISSION
showing
Connection with Public Land Surveys

Scale: 6 Miles = 1 inch.



U. S. Circuit Court
Southern Dist. of Cal.
United States
v.
S.P.R.R. Co.
No 63
Marcus Exhibit 126
Filed March 20 1890.
Master and Examiner in Chancery

State of Massachusetts
County of Suffolk.

Office of the Atlantic & Pacific R.R. Co.
Boston, February 1st 1872

Jacob Blickensderfer Jr. of Tuscarawas County, Ohio, being duly affirmed deposeth and says, that he is the Chief Engineer of the Atlantic and Pacific Rail Road Company and has been such Chief Engineer since the first day of June 1871. that during the period aforesaid and previous to the said first day of June 1871 E. N. Robinson has been employed as deputy or division engineer under said deponent and under the predecessor of said deponent. that the said deputy or division engineer as shown by his field notes, did actually survey and mark upon the ground the line or route of the Atlantic and Pacific Rail Road from San Francisco to San Miguel Mission in the state of California in the sections and at the times respectively designated by date, which are included between the flagstaffs upon and along the line of route of said railroad as delineated on this map, showing the lines of the public surveys in connection with the surveyed line of the route; and that the acts of said deputy or division engineer in the premises were duly approved and accepted on behalf of said company by this deponent as said Chief engineer of the Atlantic and Pacific Rail Road Company.

J. Blickensderfer Jr.
Chief Engr.

It is hereby certified that in pursuance of the act of Congress, approved July 27th 1866 entitled "an act granting lands to aid in the construction of a Rail Road and Telegraph line from the states of Missouri and Arkansas to the Pacific Coast" wherein a grant of lands is made by the third section to the Atlantic and Pacific Rail Road Company who are thereby authorized to construct a Rail Road and Telegraph line from Springfield in the state of Missouri to the Pacific Ocean. this map shows the line or route of said Rail Road from San Francisco to San Miguels Mission in the state of California, as definitely fixed in compliance with said act of Congress and in pursuance of the resolution of the executive committee of the Board of Directors of said Company duly authorized thereto by said Board, passed the first day of February 1872 and that the dates of the fieldwork thereof are truly indicated along the line from station to station upon this map.

In testimony whereof the Atlantic and Pacific Rail Road Company has caused the same to be signed by its President and engineer and has attached hereunto its corporate seal at Boston on the day and year first above written.

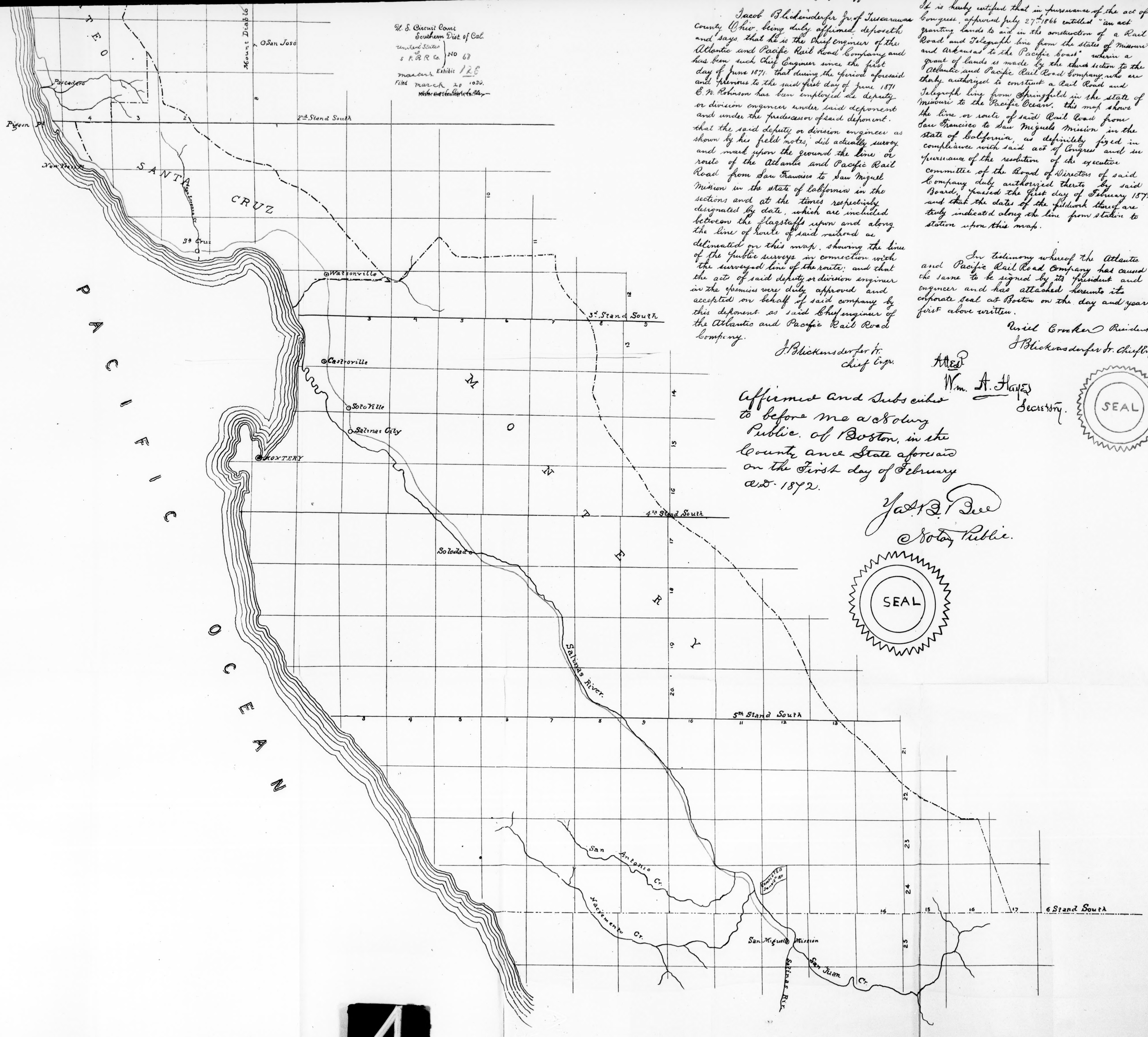
Uriel Crocker President
J Blickensderfer Jr. Chief Engineer

Attest
Wm. A. Hayes
Secretary.

SEAL

Affirmed and Subscribed to before me a Notary Public of Boston, in the County and State aforesaid on the First day of February A.D. 1872.

Jas. B. Bree
Notary Public.



Jacob Blickensderfer Jr. of Tuscarawas County Ohio, being duly affirmed deposeth and says that he is the Chief Engineer of the Atlantic and Pacific Rail Road Company and has been such Chief Engineer since the first day of June 1871. that during the period aforesaid and previous to the said first day of June 1871 E. N. Robinson has been employed as deputy or division engineer under said deponent and under the predecessor of said deponent. that the said deputy or division engineer as shown by his field notes, did actually survey and mark upon the ground the line or route of the Atlantic and Pacific Rail Road from San Francisco to San Miguel Mission in the state of California in the sections and at the times respectively designated by date, which are included between the flagstaffs upon and along the line of route of said railroad as delineated on this map. showing the lines of the public surveys in connection with the surveyed line of the route; and that the acts of said deputy or division engineer in the premises were duly approved and accepted on behalf of said company by this deponent as said Chief engineer of the Atlantic and Pacific Rail Road Company.

J. Blickensderfer Jr.
Chief Engr.

It is hereby certified that in pursuance of the act of Congress, approved July 27th 1866 entitled "an act granting lands to aid in the construction of a Rail Road and Telegraph line from the states of Missouri and Arkansas to the Pacific Coast" wherein a grant of lands is made by the third section to the Atlantic and Pacific Rail Road Company, who are thereby authorized to construct a Rail Road and Telegraph line from Springfield in the state of Missouri to the Pacific Ocean. this map shows the line or route of said Rail Road from San Francisco to San Miguels Mission in the state of California, as definitely fixed in compliance with said act of Congress and in pursuance of the resolution of the executive committee of the Board of Directors of said Company duly authorized thereto by said Board, passed the first day of February 1872 and that the dates of the fieldwork thereof are truly indicated along the line from station to station upon this map.

In testimony whereof the Atlantic and Pacific Rail Road Company has caused the same to be signed by its president and engineer and has attached hereunto its corporate seal at Boston on the day and year first above written.

Uriel Crocker President
J. Blickensderfer Jr. Chief Engineer

Attest
Wm. A. Hayes
Secretary.

SEAL

Affirmed and Subscribed to before me a Notary Public of Boston, in the County and State aforesaid on the First day of February A.D. 1872.

Yas. B. Bell
Notary Public.

SEAL

No. 1302.
U. States
vs.
S.P.R.R.Co.
et al.

p. 880

MAP
of
ATLANTIC PACIFIC RAIL ROAD

through the County of

Los Angeles and part of San Bernardino

State of California.

showing

Connection with Public Land Surveys.

Scale: 6M. = 1"

Office of the Atlantic & Pacific R.R.Co.
Boston, February 1st 1872.

It is hereby certified that in pursuance of the act of Congress approved July 27 1866 entitled "an act granting lands to aid in the construction of a Rail Road and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast" wherein a grant of lands is made by the third section to the Atlantic and Pacific Rail Road Company who are thereby authorized to construct a rail road and telegraph line from Springfield in the state of Missouri to the Pacific Ocean, this map shows the line or route of said Rail Road from a point in the western boundary of the county of Los Angeles to a point in Township seven north and Range seven east of San Bernardino Base and meridian in the state of California as definitely fixed in compliance with said act of Congress and in pursuance of the resolutions of the executive Committee of the board of Directors of said company duly authorized thereto by said Board, passed the first day of February 1872 and that the dates of the field work thereof are truly indicated along the line from station to station upon this map.

In testimony whereof the Atlantic and Pacific Rail Road Company has caused the same to be signed by its president and engineer and has attached hereunto its corporate seal at Boston on the day and year first above written

SEAL

Uriel Crocker
President

J. Blickensderfer Jr.
Chief Engineer

Attest
Wm. A. Hayes.
Secretary.

State of Massachusetts
County of Suffolk

Jacob Blickensderfer Jr of Tuscarawas county Ohio being duly affirmed deposeth and says that he is the Chief engineer of the Atlantic and Pacific Rail Road company and has been such Chief Engineer since the first day of June 1871 that during the period aforesaid and previous to the said first day of June 1871 E.N. Robinson has been employed as deputy or division engineer under said deponent that the said deputy or division engineer as shown by his field notes did actually survey and mark upon the ground the line or route of the Atlantic & Pacific Rail Road from a point on the western boundary line of Los Angeles county to a point in Township seven north and Range seven east of San Bernardino Base and Meridian, State of California in the sections and at the time respectively designated by dates which are included between the flagstaffs upon and along the line of route of said railroad as delineated on this map showing the lines of the public surveys in connection with the surveyed line of the route and that the acts of said deputy or division engineer in the premises were duly approved and accepted on behalf of said company by this deponent as said Chief Engineer of the Atlantic and Pacific Rail Road Company.

J. Blickensderfer Jr.
Chief Engineer.

Affirmed and subscribed & before me a Notary Public, at Boston in the County and State aforesaid on the first day of February A.D. 1872.

Jacob D. Lee
Notary Public

SEAL

U. S. Circuit Court
Southern Dist. of Cal.
United States
vs
S.P.R.R. et al. 68
Masters Exhibit 127
Filed March 20 1890.
Chas. L. Batchelder
Master and Examiner in Chancery

LINE OF ATLANTIC AND PACIFIC R.R.

BETWEEN

SAN MIGUEL MISSION & LOS ANGELES COUNTY LINE

STATE OF CALIFORNIA.

Ex. L. R.P.L.

No. 1302.
U. States v. S.P.R.R.Co. Etal. } p. 889

State of California
County of San Francisco } ss.

Jacob Blickensderfer Jr. of the county of Tuscarawas and State of Ohio, being duly affirmed deposeth and says that he is the chief engineer of the Atlantic and Pacific Rail Road Company and has been such chief engineer since the first day of June 1871; that during the period above named E.N. Robinson was employed by this deponent, as chief engineer for said Rail Road company, as deputy or division engineer; that the said chief engineer by himself or through the instrumentality of said division engineer as shown by his field notes did actually survey and mark on the ground or cause to be surveyed and marked on the ground, the line or route of the Atlantic and Pacific Rail Road in the state of California between the San Miguel Mission in the valley of the Salinas river in the county of San Luis Obispo, and the boundary line between the counties of Santa Barbara and Los Angeles in the valley of the Santa Clara river, in the sections and at the times respectively designated by dates, which are included between the flagstaffs upon and along the line of route of said railroad as delineated on this map, showing the lines of the public surveys in connection with the surveyed line of the route; and that the acts of the said deputy or division engineer in the premises were duly approved on behalf of said company by this deponent as said chief engineer of the Atlantic and Pacific Rail Road Company.

J. Blickensderfer Jr.
Chief Engineer

Affirmed to and subscribed this Fifteenth day of June A.D. 1872, before me.

W. G. Holmes
Notary Public

Seal

Office of the Atlantic & Pacific R.R. Company
New York August 6. 1872.

It is hereby certified that in pursuance of the act of Congress approved July 27. 1866 entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," wherein a grant of lands is made by the third section, to the Atlantic and Pacific Railroad Company, who are thereby authorized to construct a railroad and telegraph line from Springfield in the State of Missouri to the Pacific ocean, this map shows the line or route of the said Atlantic and Pacific railroad in the state of California between the San Miguel Mission in the valley of the Salinas river in the county of San Luis Obispo, and the boundary line between the counties of Santa Barbara and Los Angeles, in the valley of the Santa Clara river, being a part of the line or route of said railroad, as fixed in compliance with said act of Congress and in pursuance of the resolution of the executive committee of the Board of Directors of said Company, thereto duly authorized by said Board, passed the Sixth day of August A.D. 1872; and that the dates of the field work thereof are truly indicated along the line, from station to station upon this map.

In testimony whereof, the Atlantic and Pacific Rail Road Company has caused the same to be signed by its president and chief Engineer, and has attached hereto its corporate seal at on the day and year first above written.

Andrew Peirce Jr. President
J. Blickensderfer Jr. Chief Engineer

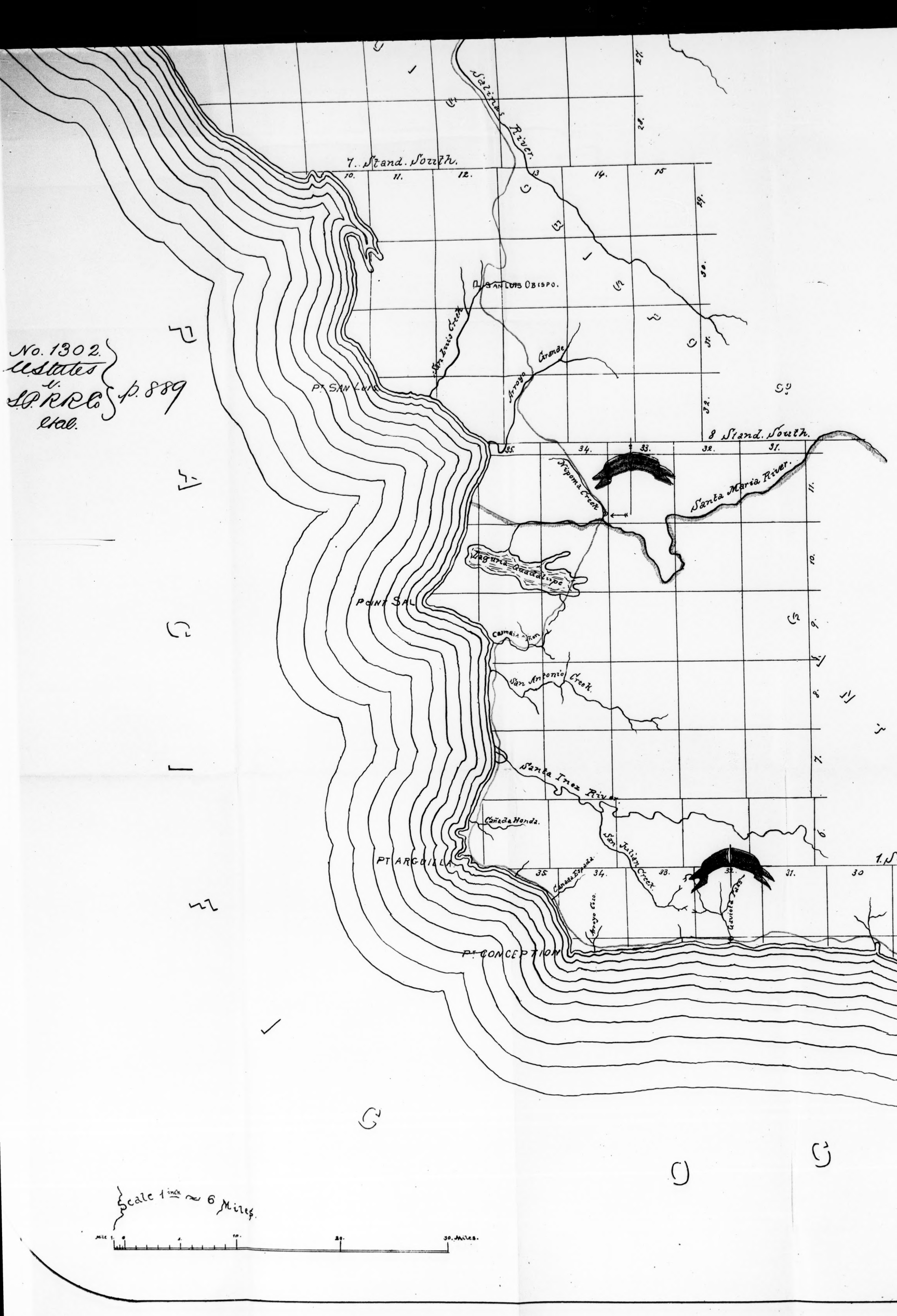
Seal

Attest
Wm. A. Hayes. Secretary.

U. S. Circuit Court
Southern Dist. of Cal.
United States vs S.P.R.R.Co. } No 68
Master's Exhibit 131
Filed March 20 1880.
Chas. L. Batchelder
Master and Examiner in Chancery

6

No. 1302
U. States
vs.
S.P.R.R. Co.
Cal.
} p. 889



through the instrumentality of said division engineer as shown by his field notes did actually survey and mark on the ground or cause to be surveyed and marked on the ground, the line or route of the Atlantic and Pacific Rail Road in the state of California between the San Miguel Mission in the valley of the Salinas river in the county of San Luis Obispo, and the boundary line between the counties of Santa Barbara and Los Angeles in the valley of the Santa Clara river, in the sections and at the times respectively designated by dates, which are included between the flagstaffs upon and along the line of route of said railroad as delineated on this map, showing the lines of the public surveys in connection with the surveyed line of the route, and that the acts of the said deputy or division engineer in the premises were duly approved on behalf of said company by this deponent as said chief engineer of the Atlantic and Pacific Rail Road Company.

J. Blickensderfer Jr.
Chief Engineer

Affirmed to and subscribed this Fifteenth day of June
A. D. 1872, before me.

Seal

C. G. Holmes
Notary Public

Office of the Atlantic & Pacific R.R. Company
New York August 6. 1872.

It is hereby certified that in pursuance of the act of Congress approved July 27 1866 entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast" wherein a grant of lands is made by the third section, to the Atlantic and Pacific Railroad Company, who are thereby authorized to construct a railroad and telegraph line from Springfield in the state of Missouri to the Pacific ocean, this map shows the line or route of the said Atlantic and Pacific railroad in the state of California between the San Miguel Mission in the valley of the Salinas river in the county of San Luis Obispo, and the boundary line between the counties of Santa Barbara and Los Angeles, in the valley of the Santa Clara river, being a part of the line or route of said railroad, as fixed in compliance with said act of Congress and in pursuance of the resolution of the executive committee of the Board of Directors of said Company, thereto duly authorized by said Board, passed the Sixth day of August A.D. 1872; and that the dates of the field work thereof are truly indicated along the line, from station to station upon this map.

In testimony whereof, the Atlantic and Pacific Rail Road Company has caused the same to be signed by its president and chief Engineer, and has attached hereto its corporate seal at on the day and year first above written.

Andrew Peirce Jr. President
J. Blickensderfer Jr. Chief Engineer.

Seal

Attest
Wm. H. Hayes Secretary.

U. S. Circuit Court
Southern Dist. of Cal.
United States
vs
S P R R Co
NO 68
Master's Exhibit 131
Filed March 20 1880.
Edward L. Sudakeller
Master and Examiner in Chancery

E. A. TRAPP

No. 1302
U. States
v.
S.P. R.R. Co.
et al.
p 890

Ex^d
R.R.L.

ROUTE

OF THE

ATLANTIC AND PACIFIC R.R.

THROUGH PART OF

SAN BERNARDINO COUNTY

CALIFORNIA,

AND TO THE

EASTERN BANK OF THE COLORADO RIVER

ARIZONA.

State of California
County of San Francisco } ss.

Jacob Blickensderfer Jr. of the county of Tuscarawas and State of Ohio, being duly affirmed deposeth and says that he is the chief Engineer of the Atlantic and Pacific Rail Road company; and has been such chief Engineer since the first day of June 1871; that during the period above named E. N. Robinson was employed by this deponent as chief Engineer of said Rail Road company as deputy or division Engineer; that the said Engineer as shown by his field notes, did actually survey, and mark upon the ground, or cause to be surveyed and marked on the ground the line or route of the Atlantic and Pacific Rail Road in the county of San Bernardino, California and to the east side of the Colorado river in Arizona, in the sections and at the times respectively designated by dates on the flagstaffs upon and along the line of route of said railroad as delineated on this map, showing the lines of the public surveys in connection with the surveyed line of the route; and that the acts of said deputy or division Engineer in the premises were duly approved and accepted on behalf of said company by this deponent as said chief Engineer of the Atlantic and Pacific Rail Road Company.

J. Blickensderfer Jr. Chf. Eng.

Affirmed to and subscribed this ninth day of July A. D. 1872, before me.

W. G. Holmes
Notary Public

Office of the Atlantic & Pacific
Rail Road Company
New York Aug 6 1872

It is hereby certified that in pursuance of the act of Congress approved July 26. 1866 entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific coast," wherein a grant of lands is made by the third section, to the Atlantic and Pacific Railroad Company, who are thereby authorized to construct a railroad and telegraph line from Springfield in the State of Missouri to the Pacific Ocean this map shows the line or route of the said Atlantic and Pacific railroad in the county of San Bernardino state of California and to the east side of the Colorado river in Arizona; being a part of the line or route of said railroad as definitely fixed, in compliance with said acts of Congress, and in pursuance of the resolution of the executive committee of the Board of Directors of said company, thereto duly authorized by said Board, passed the — Sixth — day of August A.D. 1872 and that the dates of the field work thereof are truly indicated along the line from station to station upon this map.

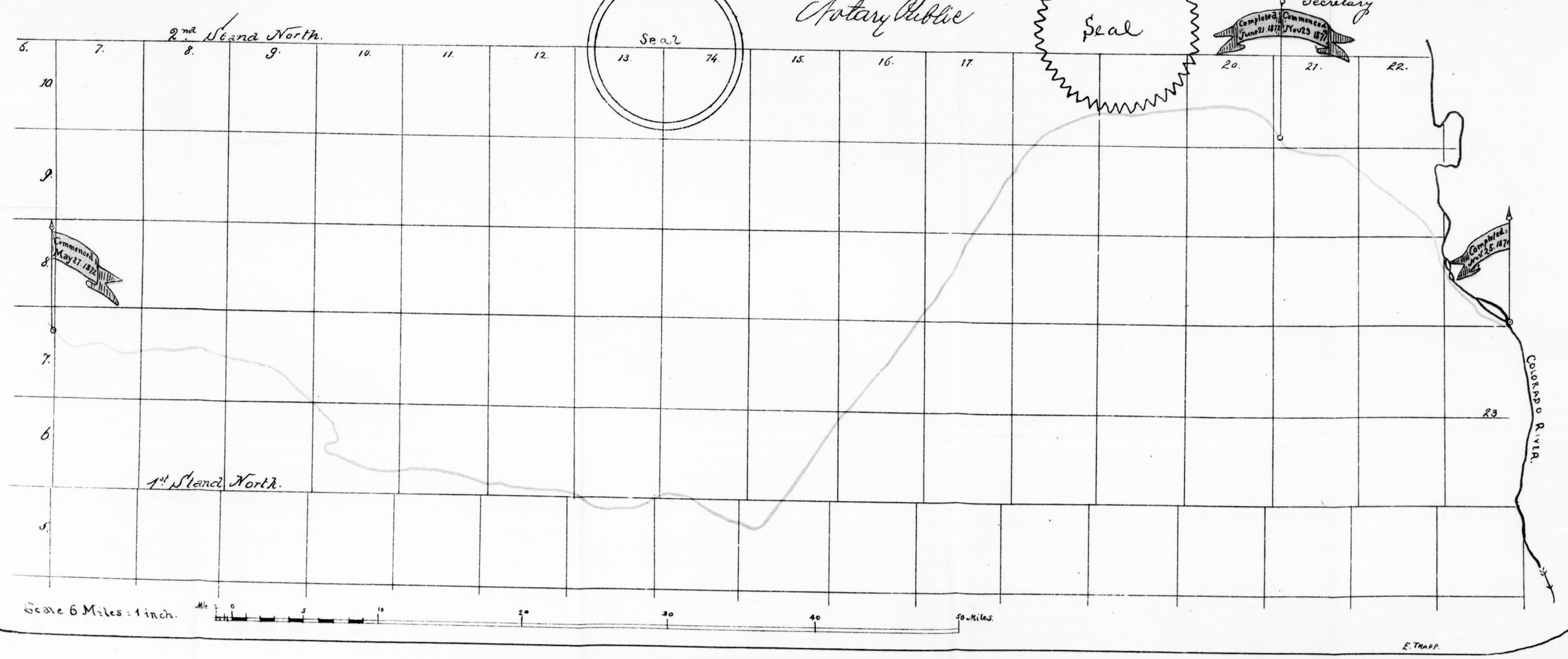
In testimony whereof the Atlantic and Pacific Rail Road Company has caused the same to be signed by its president and chief Engineer; and has attached hereunto its corporate seal at New York, on the day and year first above written.

Andrew Peirce Jr. President
J. Blickensderfer Jr. Chief Engineer

Attest
Wm. A. Hayes Secretary

Seal

Seal



E. TRAPP.

Exhibit D. No 1—

House R. Ex. Doc. No. 1. 36th Cong. 1st Sess.

To Hon. Cl. Delano Secretary of the Interior
and Hon. Willis Drummond Commissioner of General Land Office

Please to take notice that this Map is filed by the Southern Pacific Railroad Company of California in the Office of the Commissioner of the General Land Office in the Department of the Interior for the purpose designating by the heavy red line traced thereon the general route of the line of Railroad, as near as may be "from a point at or near Tehatchapa Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River" adopted by the said Southern Pacific Railroad Company in pursuance of the power and authority granted to said Company by the 23d Section of the Act of the Congress of the United States entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of a railroad and for other purposes", Approved March 3d 1871 and in pursuance of the provisions of the Act of July 27th 1866 referred to in said 23d Section, and for the purpose of obtaining the benefit of the provisions of said Acts of Congress.

Chas Crocker
President Southern Pacific
Railroad Company.

MAP OF PUBLIC SURVEYS IN CALIFORNIA & NEVADA

to accompany

REPORT of COMMISSIONER of GENERAL LAND OFFICE

1866.

U. S. Circuit Court,
Southern Dist. of Cal.
No.
Exhibit
Filed 1880.
Master and Examiner in Chancery.

Department of the Interior
General Land Office
October 24th 1866
Approved
Commissioner

REFERENCES

- Seat of Surveyor General's Office
- Seat of Land Offices
- Land Grant Rail Roads
- Light House Reservations
- Coal Mines
- Asphaltum Wells
- Salt Ponds
- Gold Mines
- Silver ....
- Quick Silver Mines
- Copper .....
- Tin .....
- Lead .....
- Oil Springs

List of Private Grants finally surveyed

U. S. Circuit Court,
Southern Dist. of Cal.
No. ...
Exhibit ...
Filed 1880.
Master and Examiner in Chancery.

~~Department of the Interior~~
~~General Land Office~~
~~October 21st 1866~~
~~Commissioner~~

REFERENCES

- Seat of Surveyor General's Office
- Seat of Land Offices
- Land Grant Rail Roads
- Light House Reservations
- Coal Mines
- Asphaltum Wells
- Salt Ponds
- Gold Mines
- Silver ....
- Quick Silver Mines
- Copper .....
- Tin .....
- Lead .....
- Oil Springs

NEVADA
PLACER
EL DORADO
ALPINE
CALAVERAS
TUOLUMNE
MARIPOSA
MONO
FRESNO
TULARE CO
INYO CO
KERN CO
SAN LUIS OBISPO
SANTA BARBARA
SAN BERNARDINO
LOS ANGELES
SAN DIEGO
VENTURA
MONTEREY
SAN BENITO
SANTA CLARA
SAN MATEO
COLUSA
YUBA
SACRAMENTO
YOLO
SOLANO
NAPA
LAKE
MENDOCINO
TRINITY
SHASTA
BUTTE
PLUMAS
LASSEN
MODOC
SIERRA
NEVADA
PACIFIC OCEAN
Tulare Lake
Owens Lake
Owens River
Colorado River
Santa Barbara Channel
San Pedro Channel
Santa Cruz Island
Santa Rosa Island
Santa Catalina Island
San Nicolas Island
Mexican Boundary
Point Conception
Point Arguello
Point Pinos
Point Reyes
Point Concepcion
Point Hueneme
Point Dume
Point Loma
Point Fermin
Point Vicente
Point Mugu
Point Sal
Point Buchon
Point Sur
Point Año Nuevo
Point Bonita
Point Arena
Point Delgada
Point Gorda
Point St George
Point Saint Mary
Point Saint Quentin
Point Saint Pablo
Point Saint Pedro
Point Saint Joaquin
Point Saint Simeon
Point Saint Vincent
Point Saint Luis
Point Saint Bernardo
Point Saint Diego
Point Saint Mateo
Point Saint Rafael
Point Saint Francisco
Point Saint Jose
Point Saint Antonio
Point Saint Clara
Point Saint Ramon
Point Saint Pablo
Point Saint Pedro
Point Saint Joaquin
Point Saint Simeon
Point Saint Vincent
Point Saint Luis
Point Saint Bernardo
Point Saint Diego
Point Saint Mateo
Point Saint Rafael
Point Saint Francisco
Point Saint Jose
Point Saint Antonio
Point Saint Clara
Point Saint Ramon

3rd Stand North
2nd Stand North
1st Stand North
1st Stand South
2nd Stand South
3rd Stand South
4th Stand South
5th Stand South
6th Stand South
7th Stand South
8th Stand South
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89th Stand South
90th Stand South
91st Stand South
92nd Stand South
93rd Stand South
94th Stand South
95th Stand South
96th Stand South
97th Stand South
98th Stand South
99th Stand South
100th Stand South

Power District
State Prison Dist.
Base Line
Mount Diablo Base and Meridian
San Bernardino Base and Meridian
Humboldt Base and Meridian

List of Private Grants finally surveyed

Explanation | Surveys executed and returned to this Office
Surveys executed, and returned to this Office, and Patents made to the Grantees

Scale 10 Miles to an inch.

Surveyor General's Office
San Francisco California Jan 8th 1867

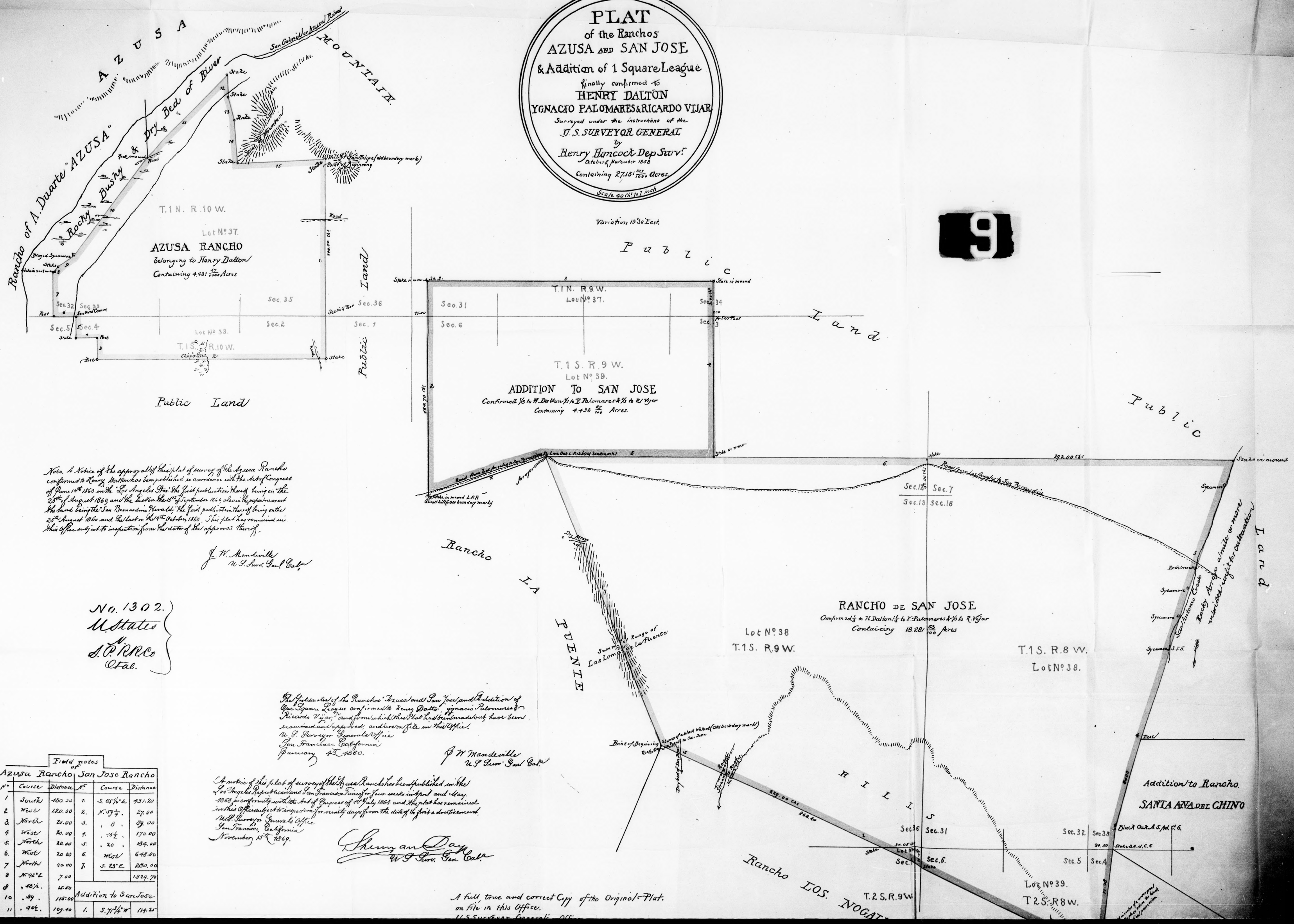
L Upson

U.S. Surv. Gen'l Cal.

No 1302
U. States
vs
SPRRCo
et al.
p. 895

PLAT
of the Ranchos
AZUSA AND SAN JOSE
& Addition of 1 Square League
finally confirmed to
HENRY DALTON
YGNACIO PALOMARES & RICARDO VIJAR
Surveyed under the instructions of the
U. S. SURVEYOR GENERAL
by
Henry Hancock Dep Surv.r
October & November 1858
Containing 27.151 327/1000 Acres.
Scale 40 Ch.s to 1 inch

9



Note. A Notice of the approval of this plat of survey of the Azusa Rancho confirmed to Henry Dalton has been published in accordance with the Act of Congress of June 14th 1860 in the "Los Angeles Star" the first publication thereof being on the 25th of August 1860, and the last on the 15th of September 1860 also in the paper nearest the land being the "San Bernardino Herald," the first publication thereof being on the 25th August 1860 and the last on the 4th October 1860. This plat has remained in this Office subject to inspection from the date of the approval thereof.

J. W. Mandeville
U. S. Surv. Genl. Cal.a

No. 1302.
U. States
v.
S. P. R.R. Co
Et al.

The Field notes of the Ranchos "Azusa and San Jose" and Addition of One Square League confirmed to Henry Dalton, Ygnacio Palomares & Ricardo Vijar," and from which this Plat has been made out, have been examined and approved, and are on file in this Office.
U. S. Surveyor General's Office
San Francisco California
January 4th 1860.

J. W. Mandeville
U. S. Surv. Genl. Cal.a

A notice of this plat of survey of the Azusa Rancho has been published in the Los Angeles Republican and San Francisco Times for four weeks in April and May 1868 in conformity with the Act of Congress of 14th July 1864 and the plat has remained in this Office subject to inspection for ninety days from the date of the first advertisement.
U. S. Surveyor General's Office
San Francisco, California
November 15th 1869.

Sherman Day
U. S. Surv. Gen. Cal.a

Field notes of

Azusa Rancho			San Jose Rancho		
No.	Course	Distance	No.	Course	Distance
1	South	180.00	1.	S. 65 1/4° E	431.20
2	West	220.00	2.	N. 59 1/4 .	27.00
3.	North	20.00	3.	. 8 .	89.00
4	West	20.00	4.	. 16 1/2 .	170.00
5.	North	20.00	5.	. 20 .	184.00
6.	West	20.00	6.	West	648.50
7	North	40.00	7.	S. 23° E	280.00
8	N. 42° E	7.00			1829.70
8	. 58 1/2 .	15.50	Addition to San Jose		
10	. 39 .	115.00			
11	. 46 1/2 .	109.40	1.	S. 71 3/4° W	114.25

A full, true and correct Copy of the Original Plat on file in this Office.
U. S. Surveyor General's Office

Lot No. 37.

AZUSA RANCHO

belonging to Henry Dalton

Containing 4.481 11/100 Acres

Rancho of

Sec. 32 Sec. 33 Sec. 35 Sec. 36

Sec. 5 Sec. 4 Lot No. 39. Sec. 2 Sec. 1

T. 1 S. R. 10 W.

Public Land

Public Land

T. 1 N. R. 9 W.

Lot No. 37.

Sec. 31 Sec. 34

Sec. 6 Sec. 3

T. 1 S. R. 9 W.

Lot No. 39.

ADDITION TO SAN JOSE

Confirmed 1/8 to H. Dalton 1/8 to I. Palomares 2 1/8 to R. Vejar

Containing 4.438 62/100 Acres.

Public Land

Note. A Notice of the approval of this plat of survey of the Azusa Rancho confirmed to Henry Dalton has been published in accordance with the Act of Congress of June 14th 1860 in the Los Angeles Star the first publication thereof being on the 25th of August 1869 and the last on the 18th of September 1869 also in the paper designated the Land being the San Bernardino Herald the first publication thereof being on the 25th August 1869 and the last on the 4th October 1869. This plat has remained in this office subject to inspection from the date of the approval thereof.

J. W. Mandeville
U. S. Surv. Gen'l Calif.

No. 1302.
U States
S. Office
Cal.

Field notes of

Azusa Rancho			San Jose Rancho		
No	Course	Distance	No	Course	Distance
1	South	160.00	1.	S. 65 1/2° E.	431.20
2	West	220.00	2.	N. 59 1/4.	27.00
3.	North	20.00	3.	" 8 "	89.00
4	West	20.00	4.	" 76 1/2 "	170.00
5.	North	20.00	5.	" 20 "	184.00
6.	West	20.00	6.	West	648.80
7	North	40.00	7.	S. 23° E.	290.00
8	N. 42° E.	7.00			1329.70
9	" 68 1/2.	15.50			
10	" 39 "	115.00	Addition to San Jose		
11	" 76 1/2.	109.40	1.	S. 71 3/4° W	114.25
12	S. 71 1/4° W	17.50	2.	North	195.76
13	" 18 1/4 E	22.50	3.	East	265.28
14	" 4 "	40.00	4.	South	160.00
15	N. 89 "	93.58	5	West	156.77
		932.40			872.08
					332.40
					1829.70
					3654.18

- 45 W. 54 1/2 18 Chs

The Field notes of the Ranchos "Azusa and San Jose and Addition" of One Square League confirmed to Henry Dalton Ignacio Palomares & Ricardo Vejar, and from which this Plat has been made have been examined and approved and have on file in this Office.
U. S. Surveyor Generals Office
San Francisco California
January 4th 1860.

P. W. Mandeville
U. S. Surv. Gen'l Cal.

A notice of this plat of survey of the Azusa Rancho has been published in the Los Angeles Republican and San Francisco Times for four weeks in April and May 1868 in conformity with the Act of Congress of 14th July 1864 and the plat has remained in this Office subject to inspection for ninety days from the date of the first advertisement.
U.S. Surveyor Generals Office
San Francisco California
November 15th 1869.

Sherman Day
U. S. Surv. Gen. Cal.

A full true and correct Copy of the Original Plat on file in this Office.
U.S. Surveyor Generals Office.
San Francisco California.
November 16th 1869.

Sherman Day
U. S. Surv. Gen. Cal.

Public Land

Stake in mound 4.00 S. 3 Stake in mound

Sec. 31 Sec. 34

Sec. 6 Sec. 3

Lot No. 37.

Lot No. 39.

Stake in mound 5 Stake in mound

Road from Lot No. 37 to San Bernardino By Live Oak L. Pisaow landmark)

Stake in mound L.P.M. Small hill & old boundary mark

Dry Arroyo

Rancho LA PUENTE

Summit Range of Las Lomas de la Puente

Lot No. 38 T. 1 S. R. 9 W.

Point of Beginning Stump of a black Walnut (Old boundary mark) Road to San Jose

Dry bed of San Jose

Stone Road

259.00 chs. 268.20

Sec. 1 Sec. 6 Sec. 5 Sec. 4

Sec. 36 Sec. 31 Sec. 32 Sec. 33

Lot No. 40

Stake

Lot No. 39. T. 2 S. R. 8 W.

Rancho LOS NOGALES.

T. 2 S. R. 9 W.

RANCHO DE SAN JOSE

Confirmed 1/2 to H. Dalton 1/2 to R. Palomares & 1/2 to R. Vejar

Containing 18.281 63/100 Acres

T. 1 S. R. 8 W. Lot No. 38.

Public Land

Stake in mound

292.00 Chs

Road from Los Angeles to San Bernardino

Sec. 18 Sec. 7

Sec. 13 Sec. 18

Sycamore

Rock mound

Sycamore

Sycamore S. J. S.

Rocky Arroyo Creek

Rocky Arroyo a mile or more by Act to a mile in width for cultivation

Post

8.00

Addition to Rancho SANTA ANA DEL CHINO

Black Oak A. S. Ad. C. 6.

21.50 Stake A. A. C. 6

Sec. 36 Sec. 31 Sec. 32 Sec. 33

Sec. 1 Sec. 6 Sec. 5 Sec. 4

Lot No. 39.

T. 2 S. R. 8 W.

77.50

Stake

Stone road marked for survey road 60 ft wide to be open 30 ft each side of the line of the original road as now established

Cross Sandstone rock S. A. C. 2

Rancho SANTA ANA DEL CHINO

No. 1302.
U. States
vs.
S.P.R.R. Co.
et al.
p. 965

HIGH BROKEN MOUNTAINS

RANCHO ADDITION to SAN JOSE

Beginning Live Oak B. S. J. N° 1 (Old Corner of Juridical Possession)

Broken Hills.

Timber, Brush and Cactus.

Sprung Live Oak S. J. N° 14

Live Oak S. J. N° 15

Cañada of San Dimas

Timbered Ravine.

Rocky Ravine

Post S. J. N° 13.

Steep Broken Hills.

Sycamore S. J. N° 12

Sycamore S. J. N° 11

Live Oak stumps, S. J. N° 10. (Old corner of Juridical Possession)

San Antonio Cañon

Rocky and Brushy Ground

Land

T. 1 N. R. 9 W.

Lot N° 37

Sec. 25. Sec. 30.

Sec. 36. Sec. 31.

T. 1 N. R. 8 W.

Lot N° 38.

Sandy Bed of Arroyo San Jose Road.

Sec. 33.

Base B. C. S. J. N° 2, in mound of rocks.

San Bernardino Base Line.

Sec. 34 Sec. 35

Sec. 4 Sec. 2

Sandy Bed of Arroyo San Dimas.

Public Land.

Thick Chemisal Brush

Los Angeles and San Bernardino Stage Road.

San Bernardino Road

Arroyo de Cerro de Nolan

Small Ravine

Ravine

Spring of Sulphur water, 25 yards on Cañada

Head of Ravine.

Road from Los Angeles to San Fernando.

Black Walnut with three arrows, B.T. N° 13 - S.J. N° 14 of former survey.

Corn Field.

RANCHO LOS NOGALES

Rolling

Sec. 35 Sec. 36.

Sec. 3

Lot N° 38

T. 1 S. R. 9 W.

RANCHO LA PUENTE

Lot N° 38

T. 1 S. R. 8 W.

Road from Los Angeles to San Bernardino.

Road from San Gabriel to Los Angeles.

Sycamore S. J. N° 9.

Cienega

Brushy

Public

Sec. 32 Sec. 33. Post S. J. N° 8.

RANCHO ADDITION TO SANTA

The field-notes of the "Rancho San Jose" [illegible] have been examined and approved. [illegible]

PLAT
of the
RANCHO SAN J
finally confirmed
Henry Dalton, Y. Palomares
Surveyed under instructio
U. S. SURVEYOR GE
by
G. H. Thompson, De
August, 1858.
Containing 36483 22/100 A
Scale 40 Chs. to 1 inch.
Magnetic Variation 14° 15'

Boundaries.

N°	Course.	Dist.
1.	S. 6¼° W.	270.7
2.	S. 2-3/4 E.	276.0
3.	S. 65¼ E.	67.0
4.	S. 53 E.	203.0
5.	S. 73¾ E.	171.14
6.	N. 58¾ E.	27.0
7.	N. 8½ E.	88.77
8.	N. 16½ E.	170.00
9.	N. 18¼ E.	503.15
10.	S. 64¾ W.	32.74
11.	S. 43¾ W.	65.00
12.	N. 75¼ W.	187.20
13.	S. 71 W.	123.30
14.	S. 45 W.	44.00
15.	N. 78¾ W.	243.37

10

PLAT
of the
RANCHO SAN JOSE
finally confirmed to
Henry Dalton, Y. Palomares and R. Vijar.
Surveyed under instructions from the
U. S. SURVEYOR GENERAL,
by
G. H. Thompson, Dep. Sur.
August, 1868.
Containing 36483 22/100 Acres.
Scale 40 Chs. to 1 inch.
Magnetic Variation 14° 15' E.

Boundaries.		
N°	Course.	Dist.
1.	S. 6¼° W.	270.75
2.	S. 23¾ E.	276.00
3.	S. 65½ E.	67.00
4.	S. 53 E.	203.00
5.	S. 79¾ E.	171.14
6.	N. 52¾ E.	27.00
7.	N. 8¾ E.	88.77
8.	N. 16½ E.	170.00
9.	N. 184 E.	609.15
10.	S. 64¾ W.	92.74
11.	S. 43¾ W.	65.00
12.	N. 75¾ W.	187.20
13.	S. 71° W.	123.30
14.	S. 45° W.	44.00
15.	N. 78¾ W.	249.37

The field-notes of the "Rancho San Jose" from which this Plat has been made, have been examined and approved, and are on file in this office.
U.S. Surveyor General's Office.
San Francisco, California.
September 18th 1868.

L. Upson
U.S. Surv.r Gen.l Cal.a

Seal
SURVEYOR GENERAL'S OFFICE
CALIFORNIA

RANCHO ADDITION TO SANTA ANA DEL CHINO.

RANCHO SANTA ANA DEL CHINO.

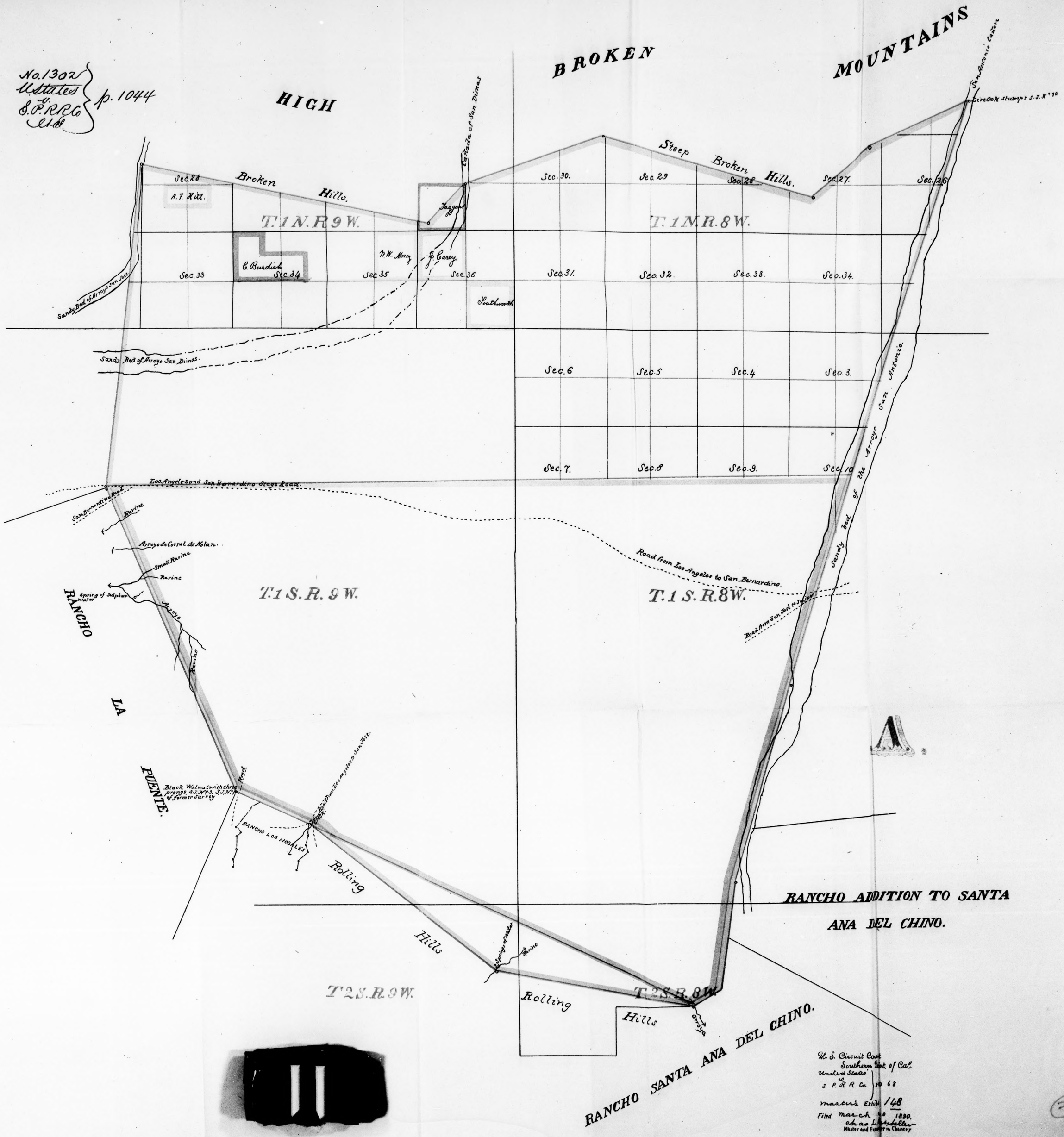
T. 1 N. R. 9 W.
T. 1 N. R. 8 W.
T. 1 S. R. 9 W.
T. 1 S. R. 8 W.
T. 2 S. R. 9 W.
T. 2 S. R. 8 W.

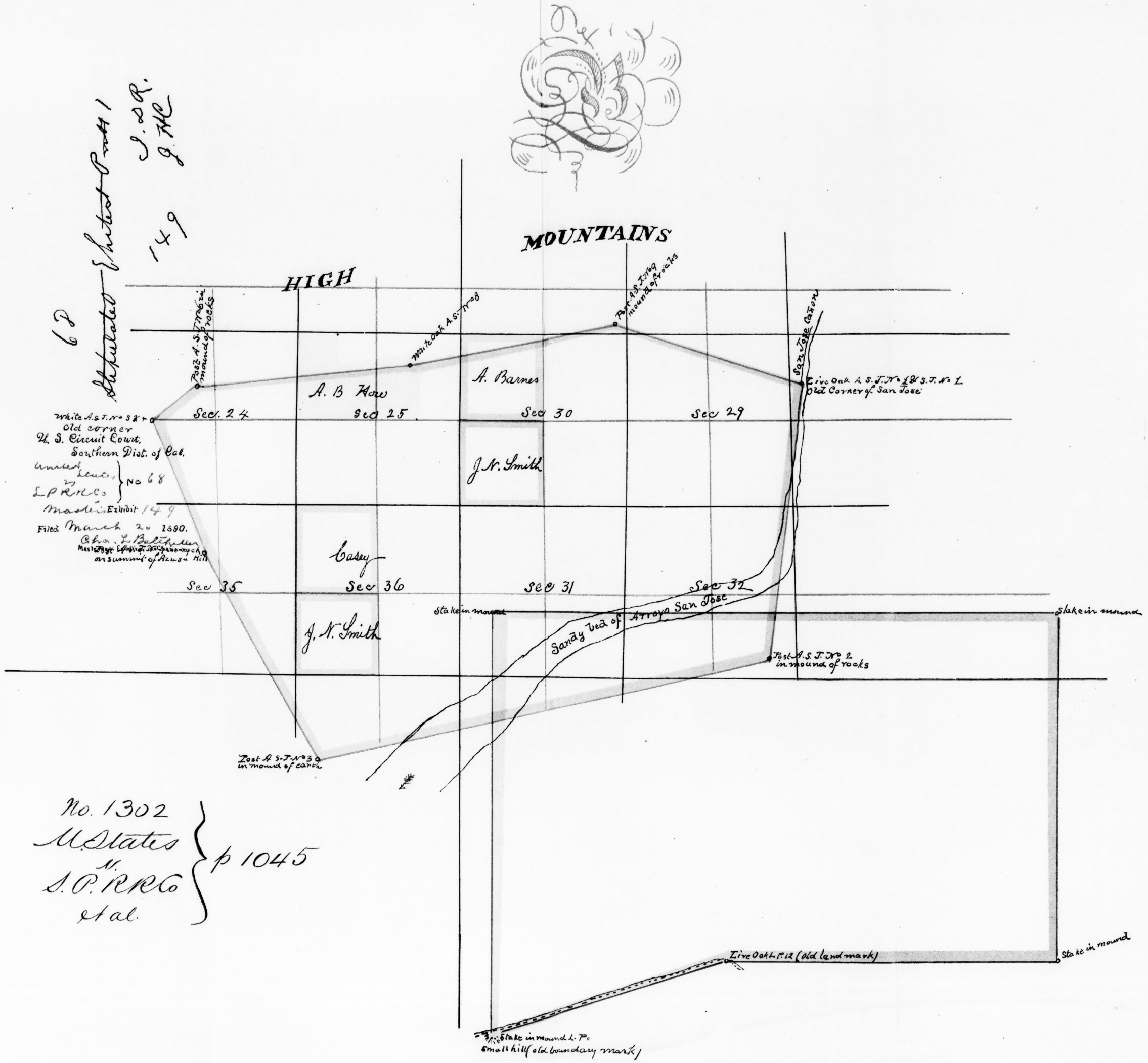
Lot N° 37
Lot N° 38
Lot N° 38
Lot N° 38
Lot N° 39

San Bernardino Base Line.

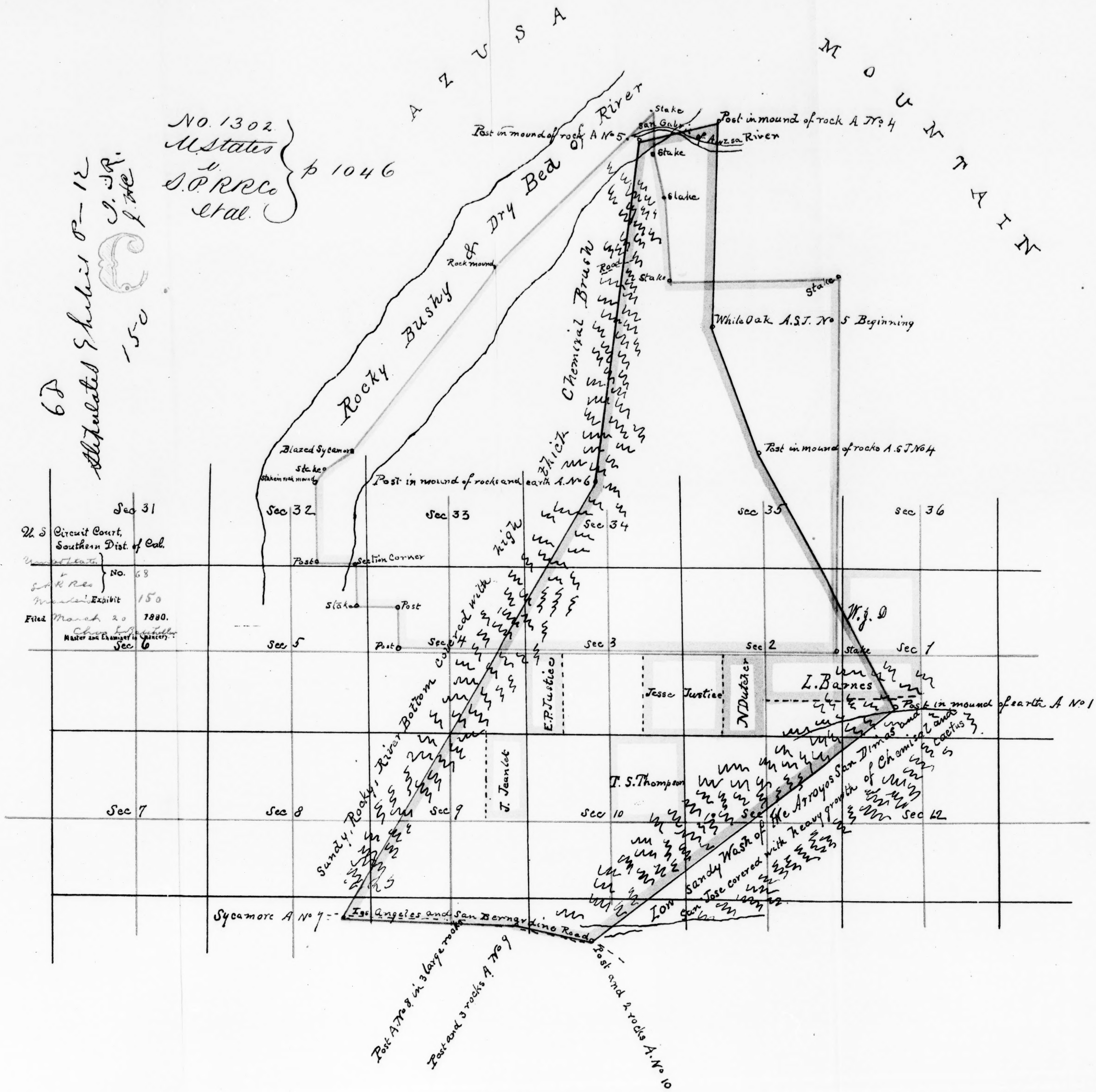
Broken Hills.
Rolling Hills.
Rocky and Brushy Ground
Land
Public Land.
RANCHO LA PUENTE
Los Angeles and San Bernardino Stage Road.
Road from Los Angeles to San Bernardino.
Road from San Jose to Los Angeles.
Arroyo de Cornal de Nolan
Arroyo San Dimas
Sandy Bed of Arroyo San Jose Road
Timber Brush and Cactus.
Black Walnut with three prongs, S.S.N° 3. S.J.N° 1. of former survey
Head of Ravine.
Corn Field.
RANCHO LOS NOGALES
Sycamore S.J.N° 9.
Live Oak S.J.N° 11.
Sycamore S.J.N° 12.
Mound of rocks.
Cactus
Sec. 25. Sec. 30. Sec. 36. Sec. 31. Sec. 33. Sec. 34. Sec. 35. Sec. 4. Sec. 3. Sec. 2. Sec. 1. Sec. 32. Sec. 5. Sec. 6. Sec. 7. Sec. 8. Sec. 9. Sec. 10. Sec. 11. Sec. 12.

10

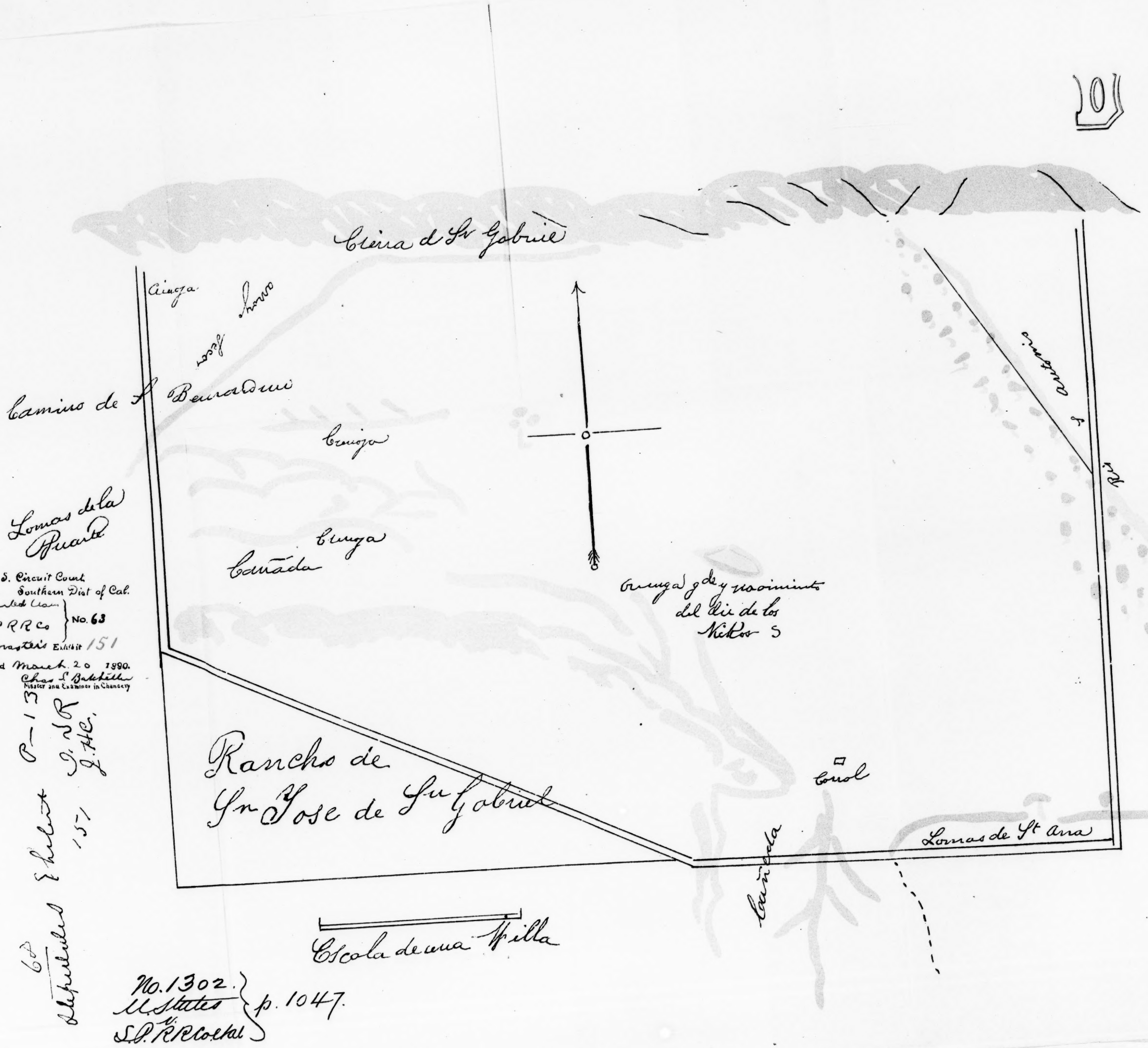

No. 1302
U. States
v.
S. P. R. R. Co
Ltd
p. 1044
HIGH
BROKEN
MOUNTAINS
Broken Hills.
Steep Broken Hills.
Cañada of San Dimas
San Antonio Cañon
Live Oak stumps S. J. No 10.
Sec. 28
Sec. 30.
Sec. 29
Sec. 28
Sec. 27.
Sec. 26
H. F. Hitt.
Taggart
T. 1 N. R. 9 W.
T. 1 N. R. 8 W.
C. Burdick
W. W. Marcy
J. Carey
Sec. 33
Sec. 34
Sec. 35
Sec. 36
Sec. 31.
Sec. 32.
Sec. 33.
Sec. 34.
Southworth
Sandy Bed of Arroyo San Jose
Sandy Bed of Arroyo San Dimas.
Sec. 6
Sec. 5
Sec. 4
Sec. 3.
Sec. 7.
Sec. 8
Sec. 9.
Sec. 10
Los Angeles and San Bernardino Stage Road.
San Bernardino Road
Ravine
Arroyo de Corral de Nolan.
Small Ravine
Ravine
Spring of Sulphur Water
Arroyo
Ravine
Road from Los Angeles to San Bernardino.
Road from San Jose to Juniper
Sandy bed of the Arroyo San Antonio.
T. 1 S. R. 9 W.
T. 1 S. R. 8 W.
RANCHO
LA
PUENTE.
Black Walnut with three prongs S. J. No 3. S. J. No 1 of former survey
Road
Road from Los Angeles to San Jose.
Creek
RANCHO LOS NOGALES
Rolling
Hills
Springs of Water
Ravine
T. 2 S. R. 9 W.
T. 2 S. R. 8 W.
Rolling
Hills
Arroyo
RANCHO ADDITION TO SANTA
ANA DEL CHINO.
RANCHO SANTA ANA DEL CHINO.
A.
U. S. Circuit Court
Southern Dist. of Cal.
United States
vs
S. P. R. R. Co. No 68
Master's Exhibit 148
Filed March 10 1890.
Chas. L. Batcheller
Master and Examiner in Chancery



Stipulated Ehtest Proff 1
I. S. R.
J. H. C.
149
HIGH MOUNTAINS
Post A.S.T. No 6 in mound of rocks
White Oak A.S. No 8
Post A.S.T. No 9 mound of rocks
San Jose Cañon
Live Oak A.S.T. No 1 & S.T. No 1 Old Corner of San Jose
A. B. How
A. Barnes
Sec. 24
Sec 25
Sec 30
Sec 29
White A.S.T. No 5 & 6 Old corner U. S. Circuit Court, Southern Dist. of Cal.
J. N. Smith
United States v. S.P.R.R.Co. No 68
Master's Exhibit 149
Filed March 20 1890.
Chas. L. Batchelder
Master Bank Exhibit No. Chaparrocha on summit of Azusa Hill
Casey
Sec 35
Sec 36
Sec 31
Sec 32
Stake in mound
Sandy bed of Arroyo San Jose
Stake in mound
J. N. Smith
Post A.S.T. No 2 in mound of rocks
Post A.S.T. No 3 in mound of earth
No. 1302
U. States v. S.P.R.R.Co. et al.
p 1045
Live Oak L.P. 12 (old land mark)
Stake in mound
Stake in mound L.P. small hill (old boundary mark)



AZUSA MOUNTAIN
NO. 1302
M. States
v.
S.P.R.R.Co
et al.
p 1046
Stipulated Exhibit P-12
150
Rocky Bushy & Dry Bed of River
Post in mound of rock A No 5
Stake
San Gabriel of Azusa River
Post in mound of rock A No 4
Stake
Stake
Rock mound
Road
Stake
Stake
White Oak A.S.T. No 5 Beginning
Chemical Brush
Blazed Sycamore
Stake
Stake in rock mound
Post in mound of rocks and earth A. No 6
Post in mound of rocks A.S.T. No 4
Sec 31
Sec 32
Sec 33
Sec 34
Sec 35
Sec 36
U. S. Circuit Court,
Southern Dist. of Cal.
No. 68
Exhibit 150
Filed March 20 1880.
Chas L. Batchelder
Master and Examiner in Chancery.
Post
Section Corner
Stake
Post
Post
Sec 6
Sec 5
Sec 4
Sec 3
Sec 2
Stake
Sec 1
W.J.D.
L. Barnes
Post in mound of earth A No 1
Jesse Justice
N Dutcher
E.P. Justice
J. Jeanlet
T. S. Thompson
Sandy, Rocky, River Bottom covered with high
Sec 7
Sec 8
Sec 9
Sec 10
Sec 11
Sec 12
Low sandy Wash of the Arroyos San Dimas and San Jose covered with heavy growth of Chemisal and cactus
Sycamore A No 7
Los Angeles and San Bernardino Road
Post A. No 8 in 3 large rocks
Post and 3 rocks A. No 9
Post and 2 rocks A. No 10

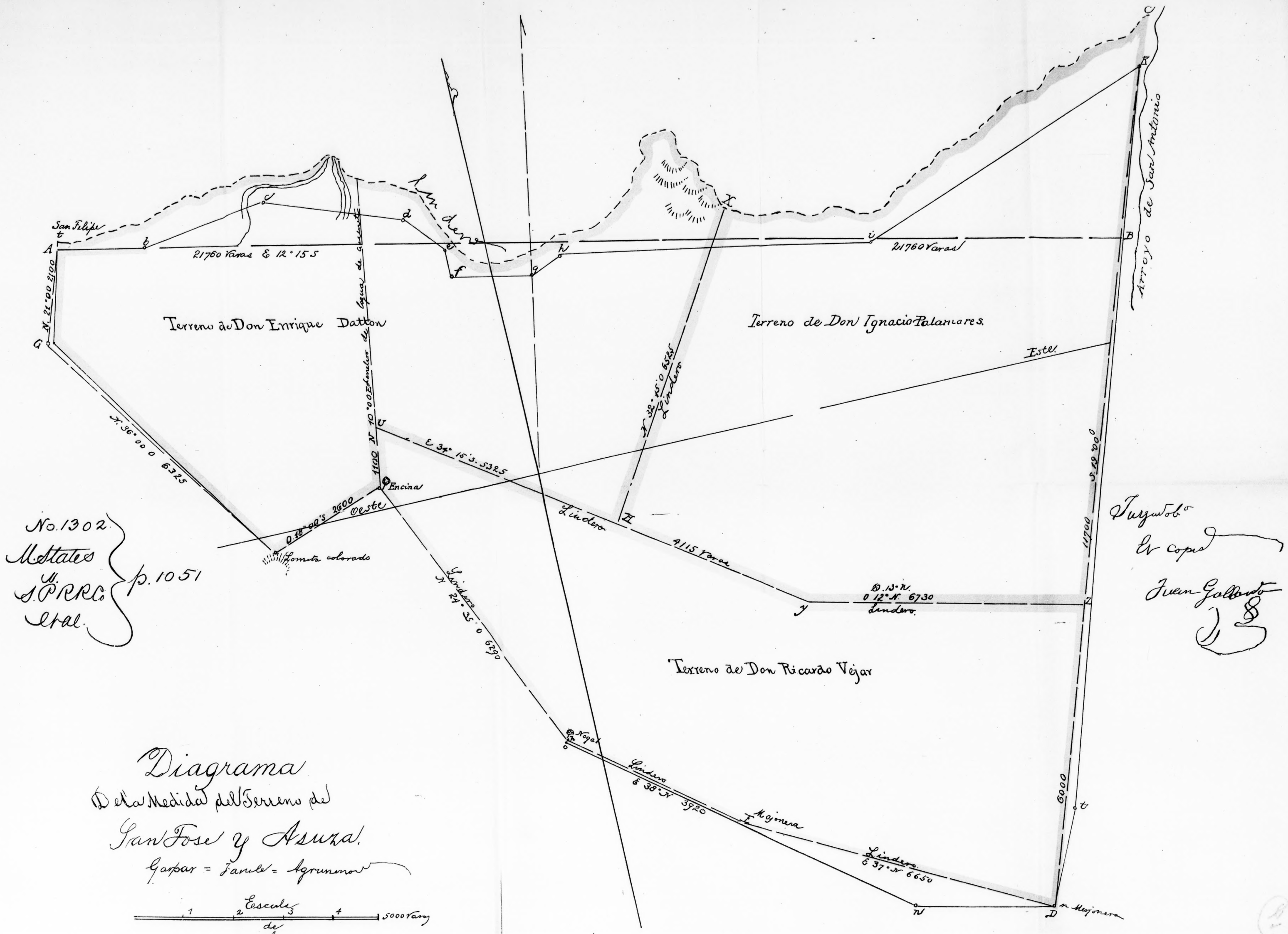


U. S. Circuit Court
Southern Dist of Cal.
United States
S P R R Co } No. 63
Master's Exhibit 151
Filed March 20 1890.
Chas L. Batchelder
Master and Examiner in Chancery

P-13
J. N R
J. H C.

68
Stipulated Exhibit 151

No. 1302.
U. States
v.
S.P. R R Co et al } p. 1047.



No. 1302
M. States
U.
S. P. R. R. Co.
et al.
p. 1051

Juzgado 6º
Es copia
Juan Gallardo

No. 1302
U. States
v.
S.P.R.R.Co
et al.
p. 1053

No 388
Ricardo Vejar
San Jose
Exhibit II
Filed in Office Oct 9. 1852
Geo. Fisher
scy

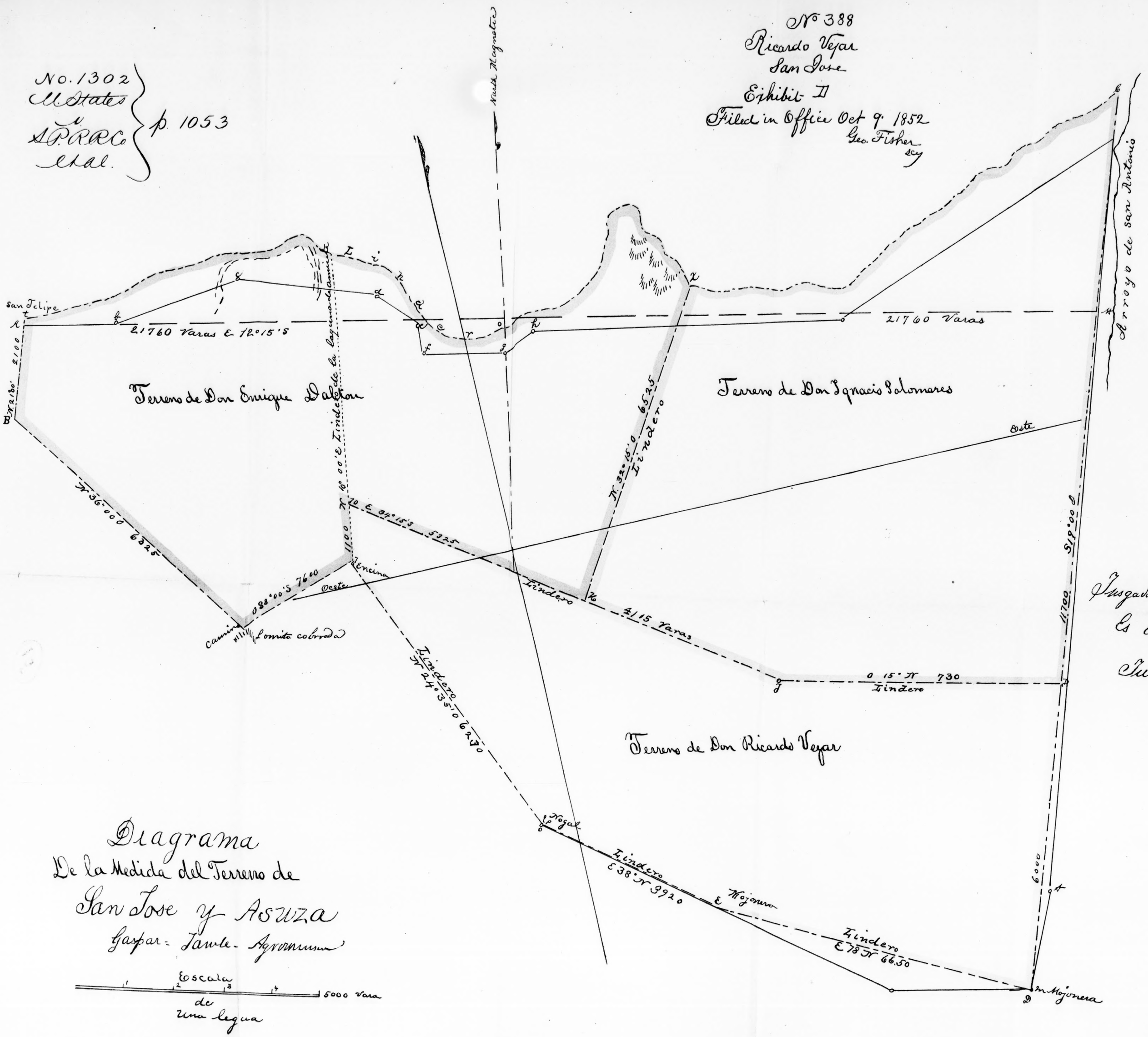


Diagrama
De la Medida del Terreno de
San Jose y Asuza
Gaspar - Jawle - Agrimensor

Escala de una legua
1 2 3 4 5000 Vara

Juzgado 1°
Es copia
Juan Gallardo

Map A
Lamb & Hancock
attys.

No. 1302.
U. States
v.
A.P.R.R.Co
et al.
p. 1055

U. S. Circuit Court
Southern Dist of Cal.
United States
vs
S. P. R. R. Co
No 68
Masers Exhibit
Filed March 20 1890.
Chas. L. Crocker Clerk
Master and Examiner in Chancery

PLAT
of the
RANCHO AZUSA
finally confirmed to
Henry Dalton.
Surveyed under instructions from the
U.S. SURVEYOR GENERAL
by
G.H. Thompson Dep. Sur.
August 1861.
Containing 39 $\frac{35}{100}$ Acres
Scale 40 Chs to an inch.
Magnetic Variation 16° E

Boundaries		
№	Course	Dist
1	N 2° E	84.11
2	North	12.00
3	S 88° W	9.00
4	S 7 W	168.00
5	S 31½ W	89.05
6	S 87 E	87.00
7	N 87½ E	29.00
8	S 77½ E	39.00
9	N 53 E	190.00
10	N 28¾ W	19.00
11	N 31¾ W	66.50

№ 564

PLAT
of the Ranchs
ADDITION TO SAN JOSE
finally confirmed to
Henry Dalton, Y. Palomares and R. Vijar.
Surveyed under instructions from the
U. S. SURVEYOR GENERAL
by
G.H. Thompson Dep. Sur,
August 1864
Containing 4,440 $\frac{00}{100}$ Acres
Scale used 1 Ch to an inch

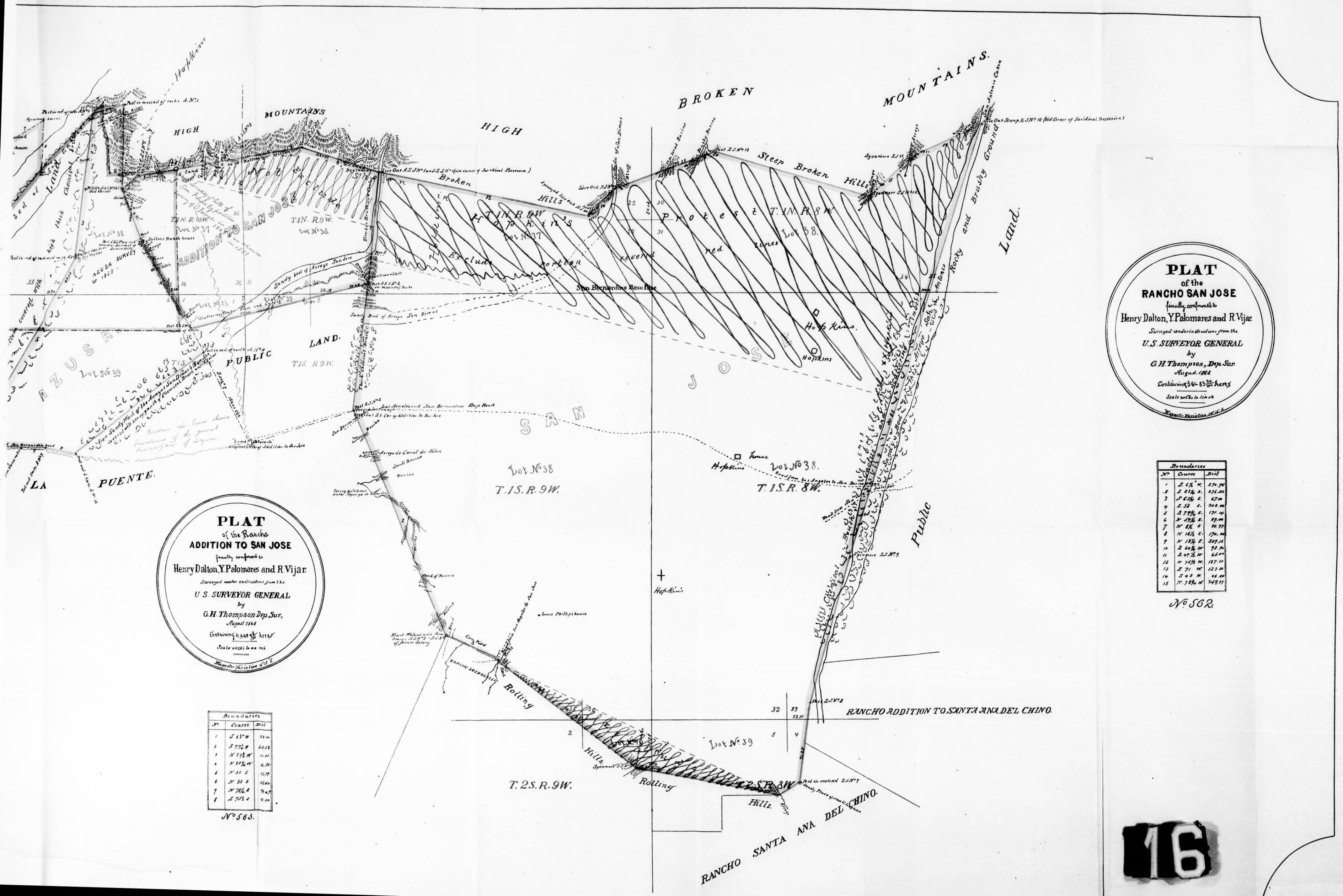
Magnetic Variation 16° E

Boundaries		
№	Course	Dist
1	S 65° W	183 00
2	S 77½ W	211.53
3	N 29½ W	114 00
4	N 28¾ W	66.50
5	N 53 E	135.75
6	N 83 E	101.00
7	N 76½ E	79.47
8	S 70½ E	91 00

№ 563

TIN R11W.
AZUSA RANCHO finally confirmed to ANDREAS DUARTE
Road to Raymond
Granite Station
Ranch House
Stake in rock mound
Dry rocky bed of Land Creek
High Thick Chaparral
Post in mound of rocks A.N.C.
Post in mound of rocks A.N.C.
HIGH MOUNTAINS
Hop Kilns
TIN. R9W.
Lot № 37
Lot № 36
ADDITION TO SAN JOSE
AZUSA SURVEY of 1859
Lot № 38
Lot № 39
Sandy bed of Arroyo San Jose
Public LAND.
TIS. R9W.
Sandy Rocky River Bed covered with Sycamore Trees
Broken and Lines shown boundaries of the ground occupied by Indians
Lands claimed as Original Rancho of Addition to San Jose
Sycamore Tree
Road to San Bernardino
Post in mound of rocks A.N.C.
Post in mound of rocks A.N.C.
RANCHO LA PUENTE.
Post S.J.N.2
Lone Adobe and San Bernardino Stage Road
Post S.J.N.1
Cor of Addition to San Jose
Arroyo de Coral de Helen
Small Ravine
Ravine
Spring of Water
Head of Ravine
Road
Lewis Phillips house
Road Adobe with Brush Fence S.J.N.3 of former Survey
Corn Field
Rancho Lands claimed by Indians
Rolling Hills
T. 2S. R. 9W.
Lot № 38
T. 1S. R. 9W.
Lot № 39
Rolling Hills.
Post in mound S.J.N.7
Stony Place of former Indian Village
RANCHO SANTA ANA DEL CHINO.
HIGH MOUNTAINS
BROKEN
Broken Hills
Exclude
Northern
Rancho
San Bernardino Base Line
Lot № 37
Lot № 38
Sycamore S.J.N.13
Steep Broken Hills
Protest T. 1N. R 8W
Lot № 38.
red stones
Hop Kilns
Hopkins
Rocky and Brushy Ground
Land.
Live Oak S.J.N.14
Live Oak S.J.N.15
Sycamore S.J.N.12
Sycamore S.J.N.11
Old Stump, S.J.N.10 (old Corner of Juridical Possession)
Cor of A.S.J.N.1 and S.J.N.1 (old corner of Juridical Possession)
Sycamore S.J.N.9
Sycamore S.J.N.8
Live Oak S.J.N.6
Live Oak S.J.N.5
Live Oak S.J.N.4
Sycamore S.J.N.3
Sycamore S.J.N.2
Public
T. 1S. R. 8W.
Hop Kilns
Hopkins
House
Lot № 38.
Boundary line opposite to San Bernardino Base Line
RANCHO ADDITION TO SANTA ANA DEL CHINO.
Lot № 39
Rolling Hills.
Post in mound S.J.N.7
Stony Place of former Indian Village
RANCHO SANTA ANA DEL CHINO.

16



PLAT
of the
RANCHO SAN JOSE
finally confirmed to
Henry Dalton, Y. Palomares and R. Vijar.
Surveyed under instructions from the
U.S. SURVEYOR GENERAL
by
G.H. Thompson, Dep. Sur.
August 1868
Containing 36 1-83 20/100 Acres
Scale 40 Chs to 1 inch
Magnetic Variation 14° 15' E.
Boundaries
No. Course Dist
1 S. 6½° W. 270.76
2 S. 23¾ E. 276.00
3 S 65¾ E. 67.00
4 S. 58 E. 208.00
5 S 79¾ E. 171.14
6 N 59¾ E. 87.00
7 N 8½ E. 86.77
8 N 16½ E. 170.00
9 N 18¾ E. 509.15
10 S 60¾ W 98.40
11 S 40½ W. 65.00
12 N 76½ W. 187.20
13 S 71 W. 123.00
14 S 45 W. 66.00
15 N. 78¾ W. 249.37
No. 562.
PLAT
of the Rancho
ADDITION TO SAN JOSE
finally confirmed to
Henry Dalton, Y. Palomares and R. Vijar.
Surveyed under instructions from the
U.S. SURVEYOR GENERAL
by
G.H. Thompson Dep. Sur.,
August 1868
Containing 4,449 44/100 Acres
Scale 40 Chs to an inch
Magnetic Variation 14° 15' E.
Boundaries
No. Course Dist
1 S 63½° W 123.00
2 S 77¾ W 213.53
3 N 29¾ W 116.00
4 N 22¾ W 66.50
5 N 52 E 25.19
6 N 83 E 102.00
7 N 78¾ E 192.47
8 S 75½ E 32.00
No. 563.
HIGH MOUNTAINS
HIGH BROKEN MOUNTAINS.
Steep Broken Hills
Rocky and Brushy Ground
Land.
Hopkins
Hopkins's Protest
Exclude portion covered red lines
San Bernardino Base Line
T.1N. R.9W.
T.1N. R.8W.
T.1S. R.9W.
T.1S. R.8W.
T.2S. R.9W.
T.2S. R.8W.
Lot No. 38
Lot No. 39
PUBLIC LAND.
AZUSA
SAN JOSE
LA PUENTE.
ADDITION TO SAN JOSE
AZUSA SURVEY
Rolling Hills.
RANCHO ADDITION TO SANTA ANA DEL CHINO.
RANCHO SANTA ANA DEL CHINO.
Public
16

No. 1302
U. States
v.
S. P. R. R. Co
et al.
p. 1057

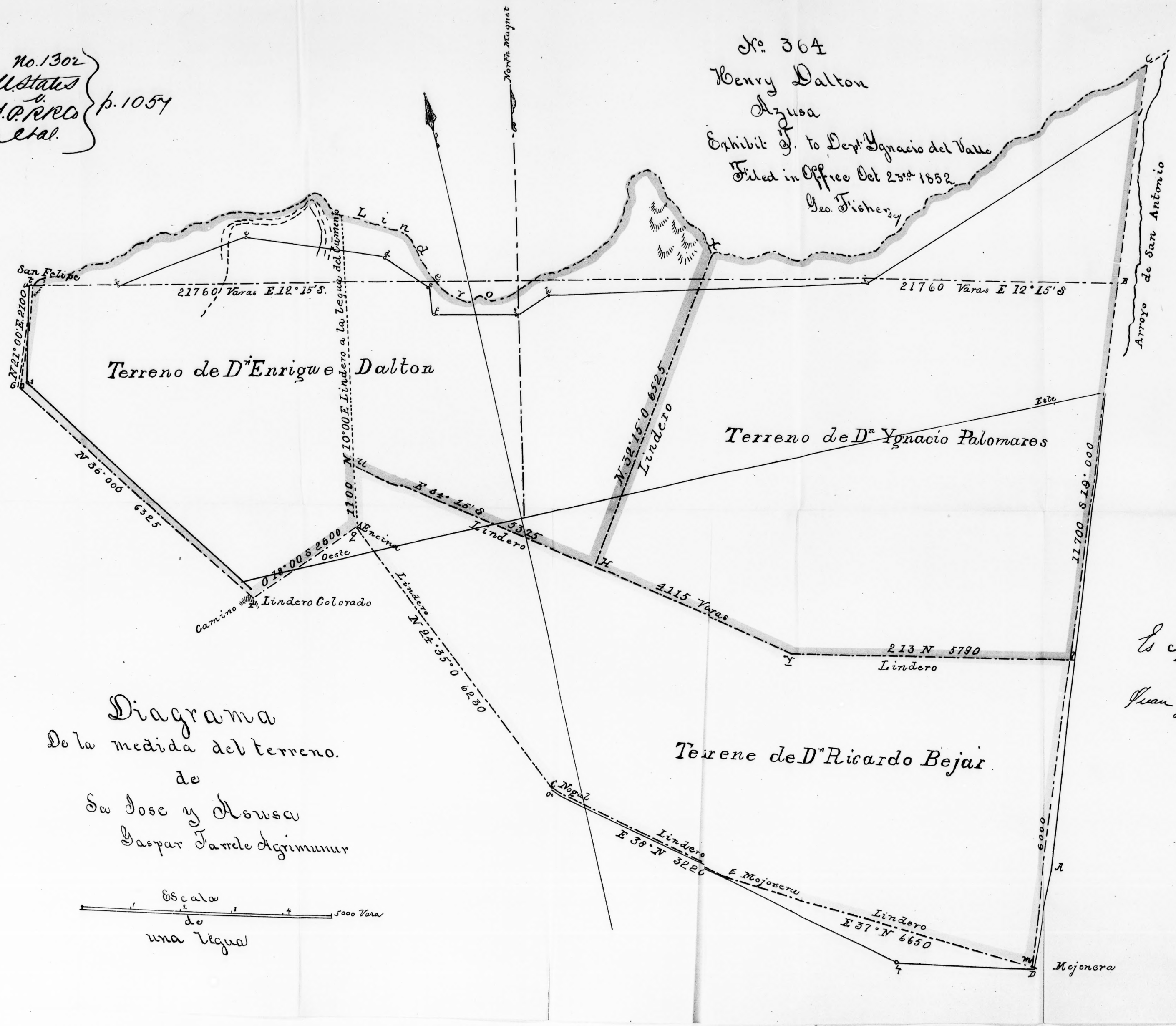


Diagrama
De la medida del terreno.
de
Sa Jose y Asusa
Gaspar Farrele Agrimunur

Escala
1 2 3 4 5000 Vara
de
una legua

Es copia origi
Juan Gallardo

Exhibit X.

U. S. Circuit Court
Southern Dist. of Cal.
United States
vs
S P R R Co. } No 68
Master's Exhibit 156
Filed March 20 1880.
Chas L. Batchelder
Master and Examiner in Chancery

No. 1302.
U. States
v.
S.P.R.R.Co
et al.
} p. 1059

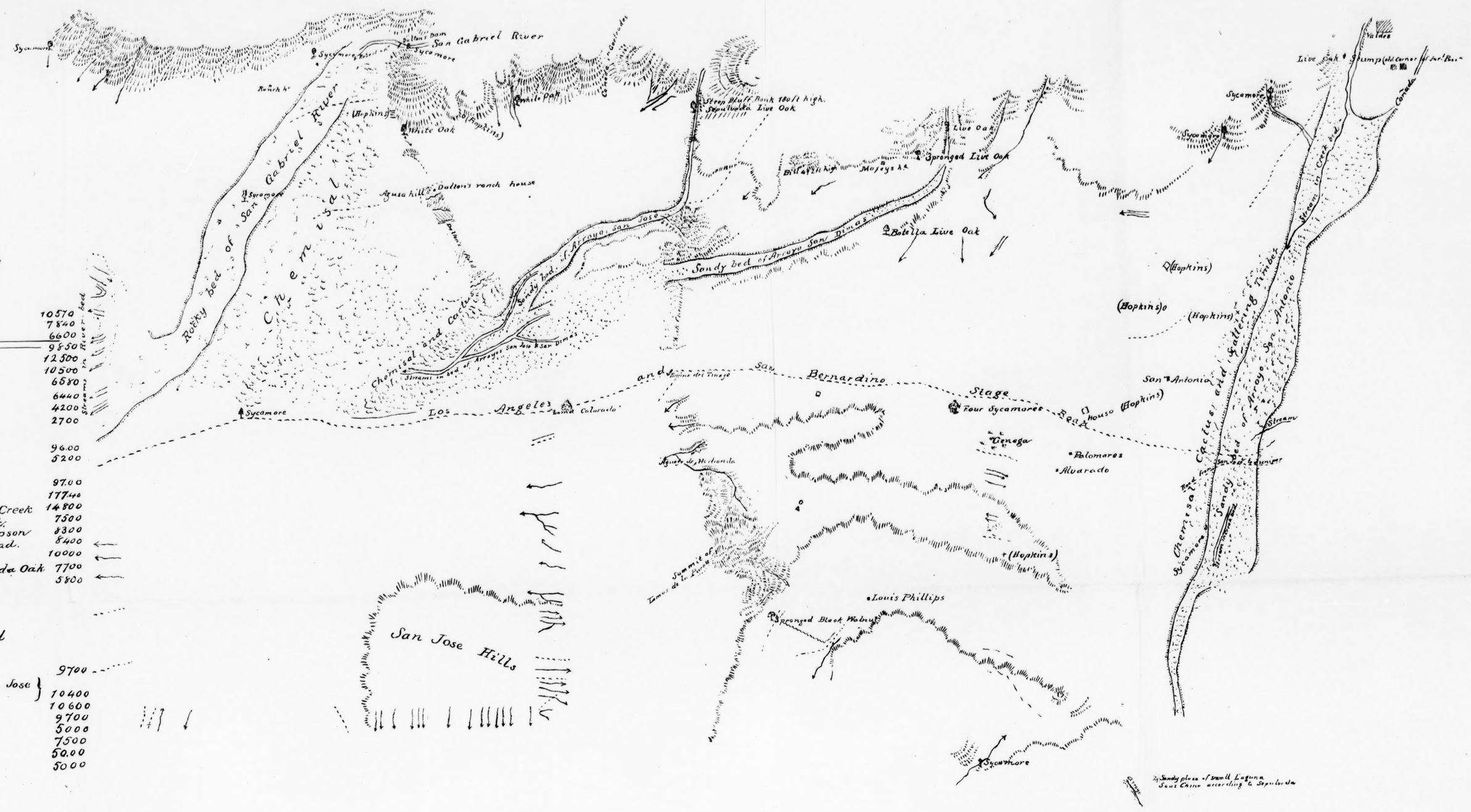
HIGH BROKEN MOUNTAINS

Table of distances in varas by the scale of this map.

Nogal or Walnut to Saus Chino	10570
Walnut to Point of Santa Ana hills (Reynolds)	7840
" " Tinaja Oak	6600
" " Botello "	9550
" " Sepulveda "	12500
" " elbow of Arroyo San José	10500
Tinaja Oak to Botello Oak	6580
" " " Sepulveda Oak	6440
" " " elbow of Arroyo San José	4200
" " " Loma Colorado.	2700
Botello " " Dos Alisos nuevos at 9700 varas from "Saus Chino"	96.00
" " to elbow of Arroyo San José	5200
Saus Chino up San Antonio Creek as per Juridical Possession	97.00
Sepulveda Oak to Oak at San Antonio	17746
Elbow of San José to bank of San Antonio Creek	14800
Loma Colorado to San Felipe hill of Hancock.	7500
" " " " Thompson	8300
" " " Sycamores on San José Road.	8400
Sycamores to Dalton's Dam	10000
San Felipe hill (Thompson's) to Sepulveda Oak	7700
" " " (Hancock's)	5800

Table of varas named in the Juridical Possession.

Saus Chino to Walnut tree	9700
Walnut tree to 'Live Oak' at Arroyo San José opposite a high hill	10400
Live Oak to 'dos Alisos nuevos'	10600
Alisos nuevos to Saus Chino	9700
Walnut tree to Loma Colorado	5000
Loma Colorado to Sycamores on San José Road	7500
" San Felipe hill	50.00
San Felipe hill to Oak at Arroyo San José	5000



PLAT

of the Natural Features of the region pertaining to the case of the

RANCHOS "SAN JOSE," "ADDITION TO SAN JOSÉ," AND "AZUSA".

Compiled by order of the

U. S. SURVEYOR GENERAL

from maps and exhibits on file in the case

from Surveys by

Hancock, Thompson, O'Farrell and Reynolds,

but excluding from this plat

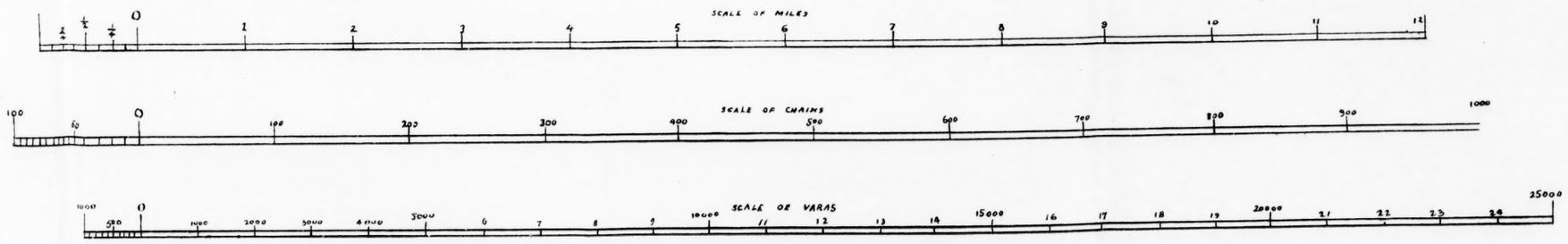
all boundary, township and section or partition lines

which appear upon the aforesaid maps and exhibits

U.S Surveyor General's Office
San Francisco, California
October 28th 1869

Approved
Sherman Day
U. S. Surv Genl for Cal

Seal.



No. 1302.
U. States
vs.
A. P. R. R. Co.
et al
p. 1061.

PLAT
of the
RANCHO SAN JOSE
finally confirmed to
Henry Dalton, Y. Palomares and R. Vijar
Surveyed under instructions from the
U. S. SURVEYOR GENERAL
by
G. H. Thompson, Dep. Sur
August 1868
Containing 36483 100 Acres
Scale 40 Chs to 1 inch.
Magnetic Variation 16° 15' E.

Boundaries.		
No.	Course	Dist.
1.	S. 6½° W.	270.76
2.	S. 23¼° E.	276.00
3.	S. 65¼° E.	67.00
4.	S. 53° E.	202.00
5.	S. 79¾° E.	171.18
6.	N. 59¼° E.	27.00
7.	N. 8½° E.	58.77
8.	N. 16½° E.	170.00
9.	N. 18¼° E.	509.15
10.	S. 64¾° W.	92.74
11.	S. 49½° W.	66.00
12.	N. 75½° W.	187.20
13.	S. 71° W.	123.30
14.	S. 46° W.	44.00
15.	N. 78¾° W.	249.37

The field notes of the Rancho San Jose from which this plat has been examined and approved and are on file in the U. S. Surveyor General's Office.
San Francisco, California.
September 18th 1868

L. [illegible]
U. S. Surveyor General

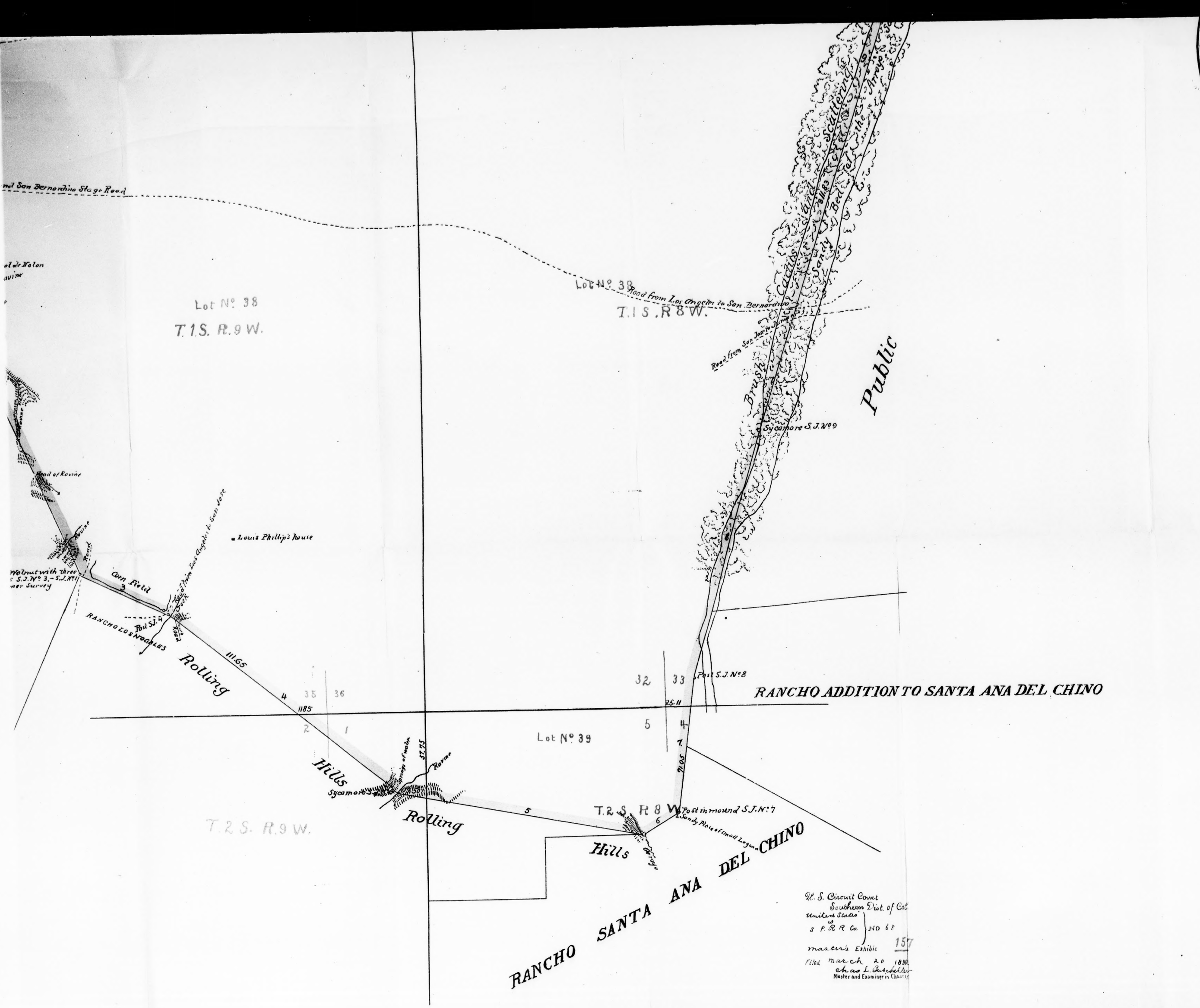
Office of U. S. Surveyor-G[illegible]
SAN FRANCISCO, CALIFORNIA

I HEREBY CERTIFY that the foregoing [illegible] plat [illegible] as the same appear of record and on file in this [illegible]

In [illegible]

19

BROKEN MOUNTAINS
HIGH
Steep Broken Hills
Broken Land
Rocky and Brushy Ground
Public Land
RANCHO ADDITION to SAN JOSE
RANCHO LA PUENTE
RANCHO ADDITION TO SANTA ANA DEL CHINO
Beginning
Post A S.J. No 1 and S.J. No 1 (old corner of Juridical Possession)
Timber Brush and Cactus
Post A S.J. No 2 in mound of Rocks
San Bernardino Base Line
Sandy Bed of Arroyo San Dimas
Post S.J. No 2
Los Angeles and San Bernardino Stage Road
Arroyo de Cerro de Valon
Spring of Sulphur Water
Head of Ravine
Post S.J. No 13
Live Oak S.J.
Sycamore S.J. No 12
Oak stump S.J. No 10, old Corner of Juridical Possession
Sycamore S.J. No 9
Post S.J. No 8
Post in mound S.J. No 7
Sandy Place of small Lagoon
Road from Los Angeles to San Bernardino
Road from San Jose
Louis Phillip's House
Corn Field
Black Walnut with three Witnesses S.J. No 1 - S.J. No 11 of former Survey
Lot No 37
Lot No 38
Lot No 39
T. 1 N. R. 9 W.
T. 1 N. R. 8 W.
T. 1 S. R. 9 W.
T. 1 S. R. 8 W.
T. 2 S. R. 9 W.
T. 2 S. R. 8 W.



U. S. Circuit Court
Southern Dist. of Cal.
United States
S. P. R. R. Co. } No 68
Master's Exhibit 157
Filed March 20 1889
Chas. L. Batchelder
Master and Examiner in Chancery

Henry Dalton, I. Palomares and R. Vijar
Surveyed under instructions from the
U. S. SURVEYOR GENERAL
by
G. H. Thompson, Dep Sur
August 1868
Containing 36483 20/100 Acres
Scale 40 chs to 1 inch.
Magnetic Variation 14° 15 E.

Boundaries.		
No.	Course	Dist.
1.	S. 6½° W	270.76
2.	S. 23¼ E	276.00
3.	S. 65¼ E	67.00
4.	S. 53 E	203.00
5.	S. 79¾ E.	171.14
6.	N. 59¼ E.	27.00
7.	N. 8½ E.	88.77
8.	N. 16½ E	170.00
9.	W. 18¼ E.	509.15
10.	S. 64¾ W.	92.74
11.	S. 49½ W	65.00
12.	N. 75½ W.	187.20
13.	S. 71 W.	123.30
14	S. 45 W.	44.00
15.	N. 78¾ W.	49.37

The field notes of the Rancho San Jose from which this Plat has been made have been examined and approved and are on file in this Office.
U. S. Surveyor General's Office.
San Francisco, California.
September 18th 1868

L. Lepson
U. S. Surv. Gen. Cal.

Office of U. S. Surveyor-General,

SAN FRANCISCO, CALIFORNIA.

I HEREBY CERTIFY that the foregoing ~~transcript~~ tracing of the Rancho San Jose has been correctly copied from the original ~~field notes~~ plat as the same appear of record and on file in this Office.

IN TESTIMONY WHEREOF I have hereunto signed my name officially and caused my seal of office to be affixed this Fourteenth (14th) day of February, 1889.

SURVEYOR GENERAL'S OFFICE Seal CALIFORNIA

J. G. Hammond Jr.
U. S. Surveyor-General for California.

(7289—504.)

PUBLIC LAND

U. S. Circuit Court
Southern Dist. of Cala.
United States
vs
S. P. R. R. Co. } No 68
Master's Exhibit 158
Filed March 20 1890
Chas. L. Batchelder
Master and Examiner in Chancery

No. 1302.
U. States
v.
S. P. RR Co.
et al. } p. 1062

Boundaries.

colored green			colored brown		
No.	Courses.	Dist.	No.	Courses	Dist.
1	S. 65½° E.	431.20	1	S W.	114.25
2	N. 59½° E.	27.00	2	North	795.78
3	N. 8° E	89.00	3	East.	265.28
4	N. 16½° E	170.00	4	South	160.00
5	N. 20° E.	184.00	5	West.	456.77
6	West	648.00			892.08
7	S. 23° E.	280.00			1829.70
		1829.70		Aggregate	2721.78
					34 m'ls. 178 ch's

A notice of this Plat of the Survey of the Rancho San Jose and Addition to San Jose has been published in the "Los Angeles Republican" and "San Francisco Times" for four weeks in April, and May 1868 in conformity with the Act of Congress of 1st July 1864, and the Plat has remained in this Office subject to inspection for ninety days from the date of the first advertisement.
U. S Surveyor General's Office
San Francisco, California
November 15th 1869

Shuman Day
U.S Surveyor Gen'l Cala

Boundaries
colored red

No	Courses.	Dist.
1	S 65½° E	431.20
2	N 59½° E	27.00
3	N 8° E	89.00
4	N 16½° E	170.00
5	N 20° E	184.00
6	West.	491.73
7	North.	160.00
8	West	265.00
9	South	195.00
10	N 71½° E	114.23
11	S 23° E	280.00

Post & charred stake in mound
T. 1 N. R. 9 W.
Lot No. 37
¼ Sec. stake
ADDITION TO SAN JOSE.
Containing 4438 65/100 Acres
Lot No. 39.
164.78 chs
T. 1 S. R. 9 W.
Live Oak (Old landmark)
Small hill
Post & charred stake in mound
Arroyo
Road
Road from Los Angeles to San Bernardino
292.00 chs.
Sycamore
Rock mound
Sycamore
Sycamore
Sycamore marked S J No
San Antonio Creek.
Arroyo a mile or more in width, much of it dry, unfit for cultivation
PUBLIC LAND.
RANCHO LA PUENTE.
Dry Arroyo
Summit on Range of Las Lomas de la Puerta
RANCHO DE SAN JOSE.
Containing 18281 63/100 Acres.
T. 1 S. R. 9 W. Lot No. 38
T. 1 S. R. 8 W. Lot No. 38.
Road from La Puerta to San Jose
Black Walnut tree (Old boundary mark)
Beginning
Dry Beds of Sandy Creeks
Stream
HILLS.
229.00 chs
RANCHO LOS NOGALES.
T. 2 R. 9 W.
T. 2 R. 8 W. Lot No. 39.
Post & charred stake in mound
Black Oak marked S. J. No 6 & C No 3.
Post
Stake
36 chs
Estill
296.50 chs
Stake
Swing
Gray Sandstone marked C No 8
Rock in center of small Lagoon agreed on as the place where the Black Willow of the Juridical Possession once emitted.
171.28 chs
84.00 chs
ADDITION TO Rº STA ANA DEL CHINO.
Rº STA ANA DEL CHINO

PLAT
of one undivided third of the
RANCHO SAN JOSE & ADDITION
OF 1 SQUARE LEAGUE
finally confirmed to
RICARDO VIJAR.
Surveyed under instructions from the
U.S. SURVEYOR GENERAL
by
Henry Hancock, Deputy Surv.
November 1858.
Containing 2272 28/100 Acres
Scale 40 chs to 1 inch

The field notes of One undivided third of the Rancho San Jose and Addition of One Square League confirmed Ricardo Vijar, and from which this Plat has been made out have been examined and approved and are on file in this Office
Pr. S. Surveyor General's Office
San Francisco California
January 4th 1850

J. W. Mandeville
U. S. Surv Gen'l Cala

The other two thirds to Henry Dalton and Ygnacio Palomares are included in the same survey, having been finally confirmed by the U.S. District Court, as per decree on file in this Office.
U.S Surveyor General's Office.
San Francisco Cala
November 15th 1869

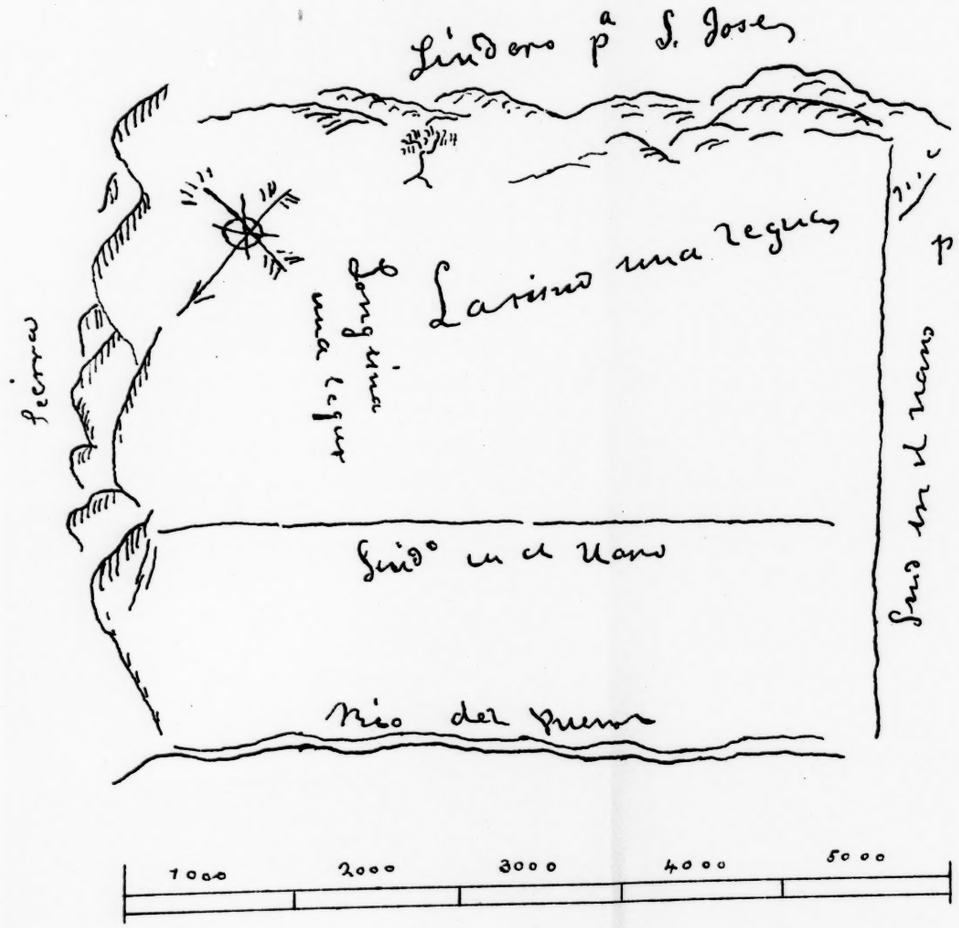
Shuman Day
U.S Surv Gen'l Cala

I hereby certify this to be a full, true and correct copy of the original Plat on file in this Office
U.S Surveyor General's Office,
San Francisco, California
November 15th 1869.

Shuman Day
U. S. Surv Gen'l Cala

No. 1302
Ustates
v
S. P. R. R. Co
Etal.
p 1064

Diseño de un pedazo de tierra p.a agregar a S. Jose



No. 364
Henry Wallon
Azusa
A
Expediente
Filed in Office Sept. 29. 1852
Geo. Mohen
Sy

No. 364

Henry Haelen

Azusa

Filed in Office Sept 29th 1852

Geo. Fisher sc

A

Expediente

20 Abs.

No. 1302

U. States

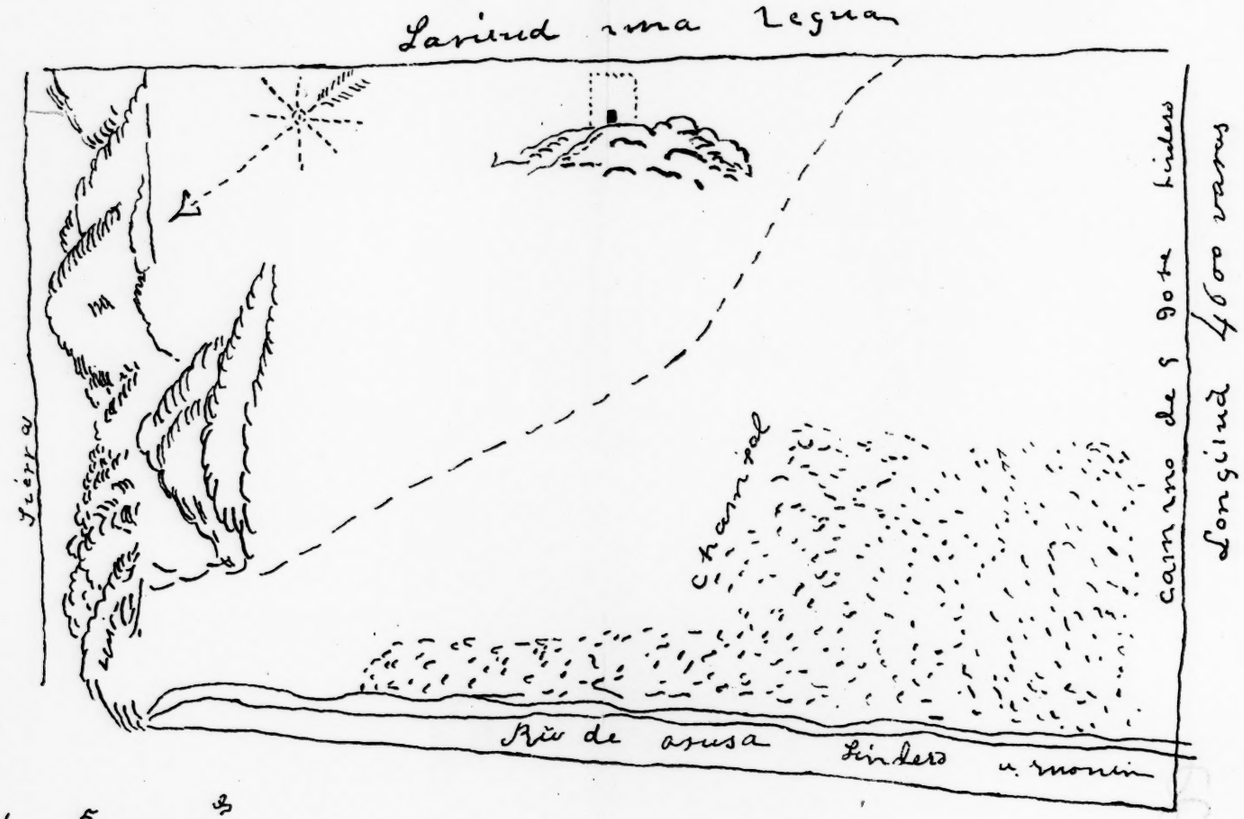
v.

S. P. R. R. Co

Cal.

p. 1065

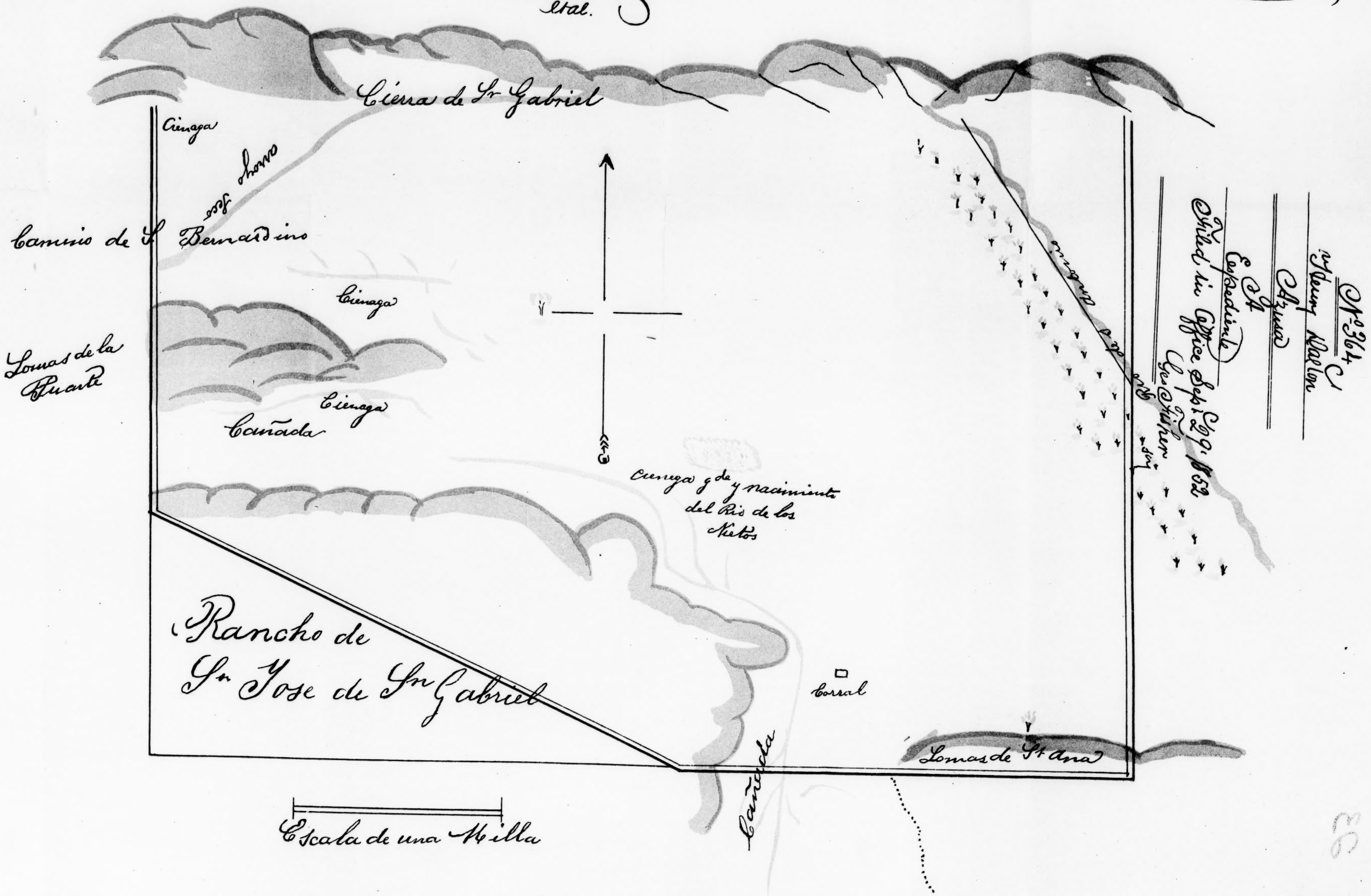
Aumento de Tierra Asusa



Escala de 5000 ps

No. 1302.
U. States
v.
S. P. R. R. Co.
et al.
p. 1066.

21 S.DK.



93

No. 1302.
U. States
v.
S.P. R.R. Co
Etal.
p. 1067

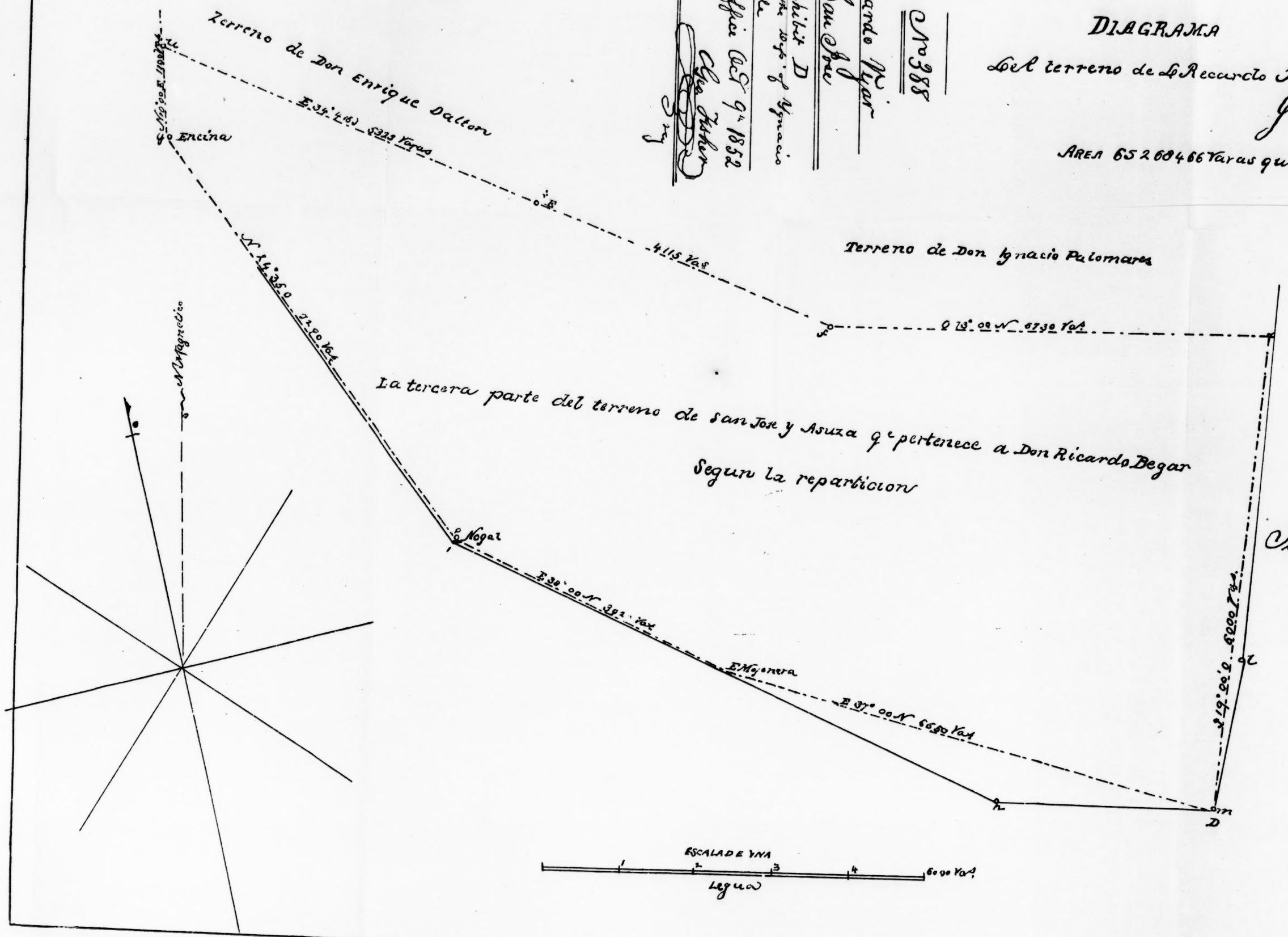
No 388
Ricardo Vejar
San Jose
Exhibit D
Annd to the Dep. of Ignacio
del Valle
Filed in office Oct 9th 1852
Geo Fisher
Srg

DIAGRAMA

Del terreno de L. Recardo Begar

Gaspar Farrell
Agrimensor

AREA 65268466 Varas quadrado



Juzgado 1.°
Es Copia
Juan Gallardo

No. 1302.
U. States
v.
J. Forbes
et al.
} p. 1069.

PLAT

of the Ranchos

AZUSA AND SAN JOSE

& Addition of 1 Square League

finally confirmed to

HENRY DALTON

YGNACIO PALOMARES & RICARDO VIJAR

Surveyed under the instructions of the

U.S. SURVEYOR GENERAL

by

Henry Hancock Dep. Surv.

October & November 1838

Containing 27151 Acres

Scale 40 Ch.s to 1 inch.

Variation 18° 30' East

25

AZUSA MOUNTAIN

San Gabriel or Azusa River

Rancho of A. Duarte "AZUSA"

Rocky Bushy & Dry Bed of River

Mountain Pine

Blazed Sycamore

Stake & Mound

Stake

Post

Road

Section Post

Stake & Mound

Section Corner

Chaparral

Public Land

T. 1 N. R. 10 W.

Lot No. 37

AZUSA RANCHO

belonging to Henry Dalton,

Containing 4431 Acres

Sec. 32 Sec. 33 Sec. 35 Sec. 36

Sec. 5 Sec. 4 Sec. 2 Sec. 1

Lot No. 39

T. 1 S. R. 10 W.

Public Land

T. 1 N. R. 9 W.

Lot No. 37.

Sec. 31 Sec. 34

Sec. 6 Sec. 3

T. 1 S. R. 9 W.

Lot No. 39

ADDITION TO SAN JOSE

Confirmed 1/3 to H. Dalton, 1/3 to Y. Palomares & 1/3 to R. Vijar

Containing 4438 Acres.

Public Land

Note. A Notice of the approval of this plat of survey of the Azusa Rancho confirmed to Henry Dalton has been published in accordance with the Act of Congress of June 14th 1860 in the "Los Angeles Star" the first publication thereof being on the 25th of August 1860 and the last on the 15th of September 1860 also in the paper nearest the lands being the "San Bernardino Herald" the first publication thereof being on the 25th August 1860 and the last on the 4th October 1860 This plat has remained in this office subject to inspection from the date of the approval thereof.

J. W. Mandeville
U. S. Surv. Gen'l Cal.

Field notes of Azusa Rancho

No.	Course	Distance
1	South	180.00
2	West	220.00
3	North	20.00
4	West	20.00
5	North	20.00
6	West	20.00
7	North	40.00
8	N 42° E	7.00
9	" 58½ "	15.50
10	" 39 "	116.00
11	" 46½ "	109.40
12	S. 71¼ W	19.50
13	" 18½ E.	22.50
14	" 4 "	40.00
15	N. 89 "	13.50

Field notes of San Jose Rancho

No.	Course	Distance
1	S 65½° E	431.20
2	N 59½ "	27.00
3	" 8 "	89.00
4	" 16½ "	170.00
5	" 20 "	134.00
6	West	648.80
7	S. 23° E.	220.00
		1329.70

Addition to San Jose

No.	Course	Distance
1.	S. 71¼ W	114.25
2.	North	196.78
3	East	265.28
4	South	160.00
5	West	114.25

The field notes of the Ranchos "Azusa" and San Jose and Addition of One Square League confirmed to Henry Dalton Ygnacio Palomares & Ricardo Vijar, and from which this Plat has been made out, have been examined and approved and are on file in this Office.
U. S. Surveyor General's Office,
San Francisco, California
January 4th 1860

J. W. Mandeville
U. S. Surv. Gen'l Cal.

A notice of this plat of Survey of the Azusa Rancho has been published in the "Los Angeles Republican" and "San Francisco Times" for four weeks in April and May 1868 in conformity with the Act of Congress of 1st July 1864, and the plat has remained in this office subject to inspection for ninety days from the date of the last advertisement.
U. S. Surveyor General's Office
San Francisco California
November 15th 1869.

Surman Day
U. S. Surv. Gen'l Cal.

A full, true and correct Copy of the Original Plat on file in this Office
U. S. Surveyor General's Office,
San Francisco, California.
November 10th 1869

Rancho LA PUENTE

Rancho LOS NOGALES

Road from Los Angeles to San Bernardino

Arroyo

Old Stake in mound

Old Willow (old boundary mark)

Old Walnut (old boundary mark)

Point of Beginning

Summit of Range of Las Lomas de la Puente

Dry Arroyo

Rocky Arroyo a mile or more in width usual for cultivation

San Antonio Creek

Sycamore

Rock mound

Stake in mound

292.00 Chs

229.00 Chs

RANCHO DE SAN JOSE

Confirmed ⅓ to H. Dalton, ⅓ to Y. Palomares & ⅓ to R. Vijar

Containing 18 21/100 Acres

Lot No. 38

T. 1 S. R. 9 W.

T. 1 S. R. 8 W.

Lot No. 38.

HILLS

Sec. 36 Sec. 31

Sec. 1 Sec. 6

Lot No. 40

Lot No. 39.

T. 2 S. R. 9 W.

T. 2 S. R. 8 W.

Addition to Rancho SANTA ANA DEL CHINO

Block O No. A.S.A. del C. 6

Sec. 32 Sec. 33

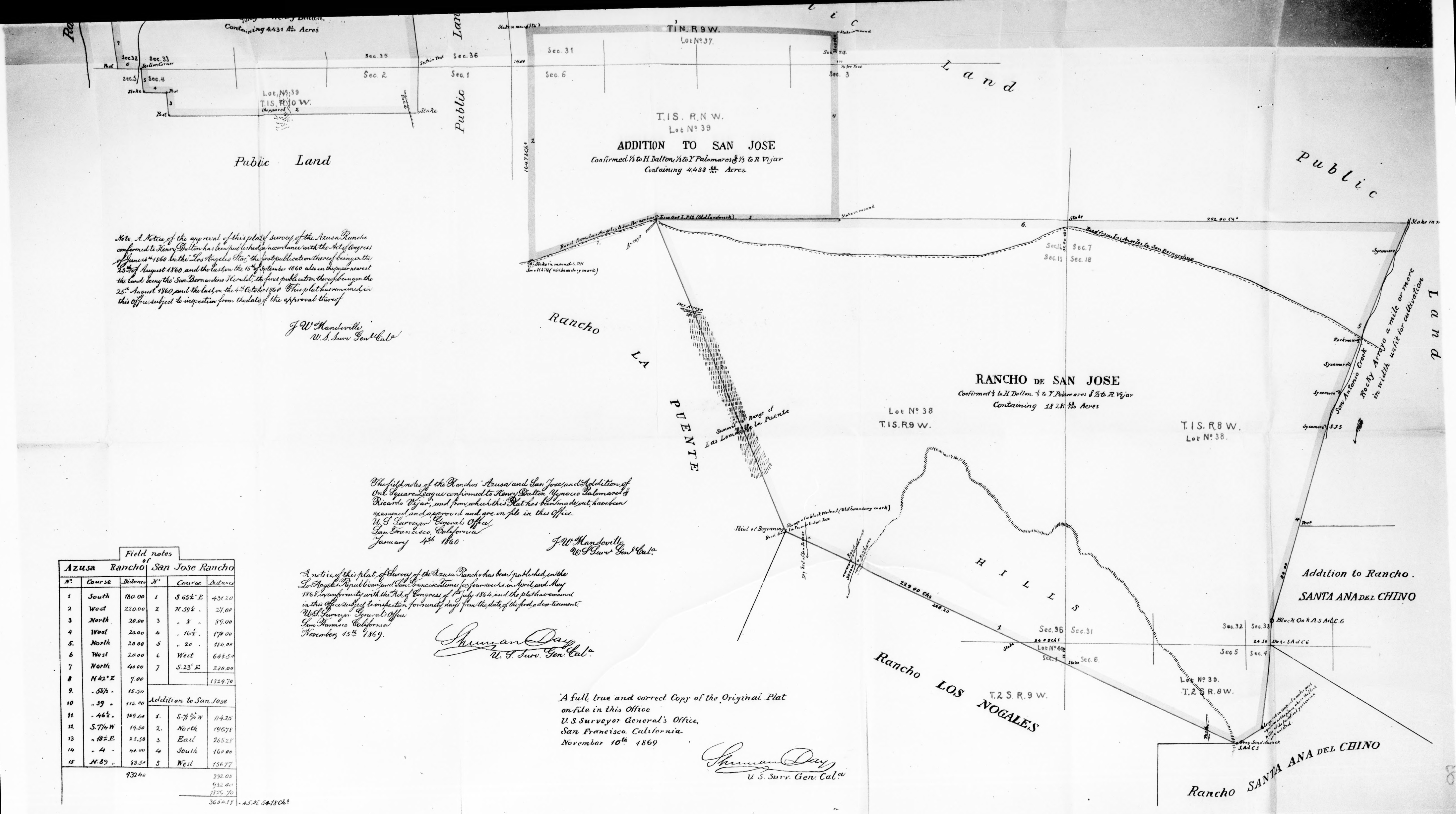
Sec. 5 Sec. 4

24.50 No. A.S.A. del C. 6

Public Land

Public Land

SANTA ANA DEL CHINO



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U. S. Surveyor General's Office
San Francisco California
November 15th 1869.

Shuman Day
U. S. Surv. Gen. Cal.

A full true and correct Copy of the Original Plat on file in this Office
U. S. Surveyor General's Office,
San Francisco, California.
November 10th 1869

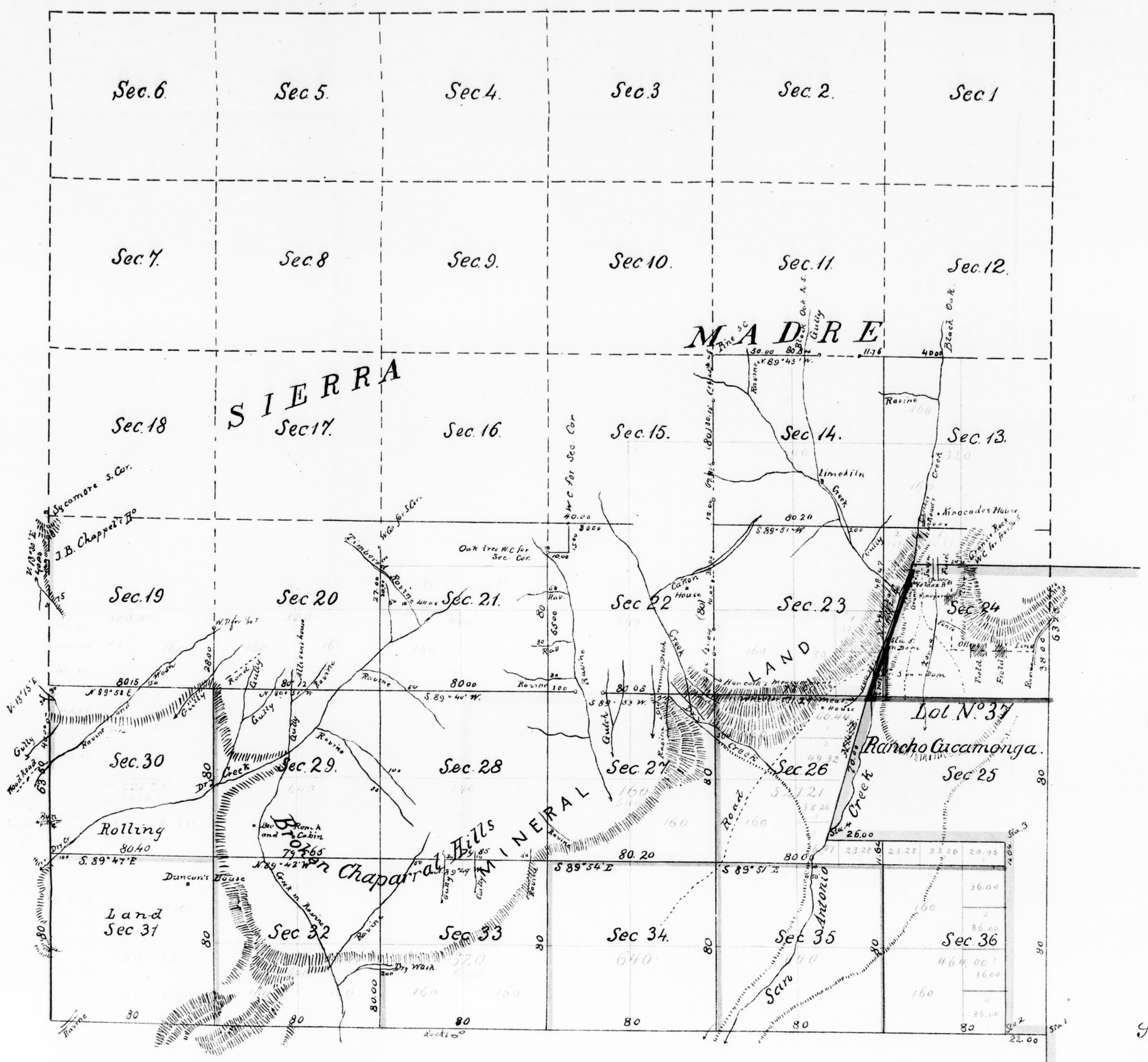
Shuman Day
U. S. Surv. Gen. Cal.

Field notes of

Azusa Rancho			San Jose Rancho		
No.	Course	Distance	No.	Course	Distance
1	South	180.00	1	S. 65½° E	431.20
2	West	220.00	2	N. 59½ "	27.00
3	North	20.00	3	" 8 "	89.00
4	West	20.00	4	" 16½ "	170.00
5.	North	20.00	5	" 20 "	184.00
6	West	20.00	6	West	648.50
7	North	40.00	7	S. 23° E	280.00
8	N. 42° E	7.00			1829.70
9.	" 58½ "	15.50			
10	" 39 "	116.00	Addition to San Jose		
11	" 46½ "	109.40	1.	S. 71¾° W	114.25
12	S. 71¼ W	19.50	2.	North	196.78
13	" 18¼ E	22.50	3.	East	265.28
14	" 4 "	40.00	4	South	160.00
15	N. 89 "	83.50	5	West	156.77
		932.40			892.08
					932.40
					1829.70
					3654.18

= 45 M. 54.18 Chs.

Township N°1 North Range N° 8 West San Bernardino Meridian.


Sec. 6
Sec. 5
Sec. 4
Sec. 3
Sec. 2
Sec 1
Sec. 7
Sec 8
Sec 9.
Sec 10.
Sec 11
Sec 12.
Sec 18
Sec 17.
Sec 16.
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Sec 27
Sec 26
Sec 25
Sec 31
Sec 32
Sec 33
Sec 34.
Sec 35
Sec 36
MADRE
SIERRA
LAND
MINERAL
Lot N° 37
Rancho Cucamonga.
Rolling
Land
Brown Chaparral Hills
Sycamore S. Cor.
J.B. Chappell's R°
Duncan's House
Lime kiln
Creek
Ravine
Gully
Road
Dry Wash
Dry Creek
Cabin
Spring
Fence
Oak tree W.C. for Sec Cor
W.C. for Sec Cor
Stone W.C. for Sec Cor
Stone W.C. for Sec
Stone W.C. for Sec
Stone W.C. for Sec

BODIE LAND DISTRICT

29 30 31 32

XXXIII XXXIV XXXV XXXVI XXXVII XXXVIII XXXIX XL XLI XLII XLIII XLIV XLV XLVI XLVII

20 Miles Limit S P

Mojave

12 11 10 9 8 7 6 5 4 3 2 1N 1S 2

30 Miles Limit A P

20 Miles Limit A.P.

SAN FRANCISCO LAND DIST

LOS ANGELES LAND DISTRICT

XXV XXIV XXIII XXII XXI XX XIX XVIII XVII XVI XV XIV XIII XII XI X IX VIII VII VI V IV III II I W

30 Miles Limit Branch Line S.P.

20 Miles Limit Branch Line S.P.

20 Miles Limit Branch Line S.P.

30 Miles Limit Branch Line S.P.

San Bernardino Meridian

Branch of Southern Pacific Railroad

Southern Pacific Railroad

20 Miles Limit A P

Base Line San Bernardino

30 Miles Limit A.P.

PACIFIC OCEAN

In U. S. Circuit Court,
Southern Dist. of Cal.
No.
Equity

Filed 1880.

No. 1302.
United States
v.
S. P. R.R. Co. et al.

p. 1034.

C. P. R. R. Co. v. Doyle
Map No. 1. (U.S.)

No. 1302.
U. States
v.
S. P. R. R. Co.
et al.
} p. 1228

PLAT
SHOWING THE LOCATION OF THE ROUTE
of the
SOUTHERN PACIFIC RAILROAD
(OF CALIFORNIA.)

Under an Act granting Lands to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast, by the Southern Route.

Approved

Scale, Eighteen Miles to One Inch.

Office of the Southern Pacific Railroad Company.
San Francisco, California.

We hereby certify, that this Map indicates the Route of the Preliminary Survey of the Southern Pacific Railroad, and as such was adopted and approved by a vote of the Board of Directors of the Southern Pacific Railroad Company, at a meeting held at their Office, in the City of San Francisco, on the 22nd day of September A.D. 1866.

In witness whereof we have hereunto set our hands and seals this 29th day of September A.D. 1866.

T. J. Phelps — President Southern Pacific Railroad Company.
Chas. M. Fox — Secretary pro tem. Southern Pacific R.R.Co.
Wm. S. Lewis — Chief Engineer Southern Pacific R.R.Co.

Explanations.

Route of the Southern Pacific Railroad.
Line of 20 miles, limit for 10 Alternate Sections.
Line of 10 miles additional, for selections in lieu of Grants Sales, etc.
Line of 20 miles additional, for selections within Mineral Lands.
Line of 5 miles addition, for possible change of location.

U. S. Circuit Court,
Southern Dist. of Cal.
} No. 68
Exhibit 179
Filed 1880.

List of Private Grants finally surveyed

Chas. N. Fox Secretary pro tem Southern Pacific R.R.Co.

Wm. V. Lewis – Chief Engineer Southern Pacific R.R.Co.

Explanations

Route of the Southern Pacific Railroad

Line of 20 miles, limit for 10 Alternate Sections.

Line of 10 miles additional, for selections in lieu of Grants Sales, etc.

Line of 20 miles additional, for selections in lieu of Mineral Lands.

Line of 5 miles addition, for possible change of location.

U. S. Circuit Court,
Southern Dist. of Cal.
United States
vs. } No. 63
S.P.R.R. Co.
Exhibit 179
Filed March 22 1890.
Clerk.

List of Private Grants finally surveyed

1	San Buenaventura	85	Ranchos not definitely surveyed, viz:	166	Rancho Cañada de Gonzales	256	Point Pinos
2	El Paso de Bartolo viejo de los Bernardos		George B Dornwell's	167	Part of San Antonio, Limits Mexn.	257	Rancho and part of
3	La Natividad (Castro)		Lewis D Mallory's	168	" " " (4 Leagues)	258	Laguna Seca (Cole & Bowers)
4	Los Flores		Martin P Gormley's	169	Refugio	259	El Potrero y de la Salsipuedes
5	Las Juntas		Pedro J Vasquez' and	170	Rincon de los Gatos	260	Carmelo Mission (Church property)
6	Rio de los Molinos		Jackson S Dewitt's	171	Rancho del Chualar (Geo. W. Dorn)	261	Canada de la Segunda
7	Bonyacas	84	Punta de los Reyes	172	Llano de la Natividad	262	El Sur
8	Quiroz	85	Punta de los Reyes (Lobos)	173	Rancho Sausal Redondo (Mrs. Wilson)	263	Rancho Nacional
9	Arroyo Chico	86	Potrero y Bonilla (R. Carrillo)	174	Rancho Salsipuedes (Mrs. Wilson)	264	Rancho Aguajito
10	Farrell (part of J. Williams)		Rancho Punta de los Reyes	175	Rancho Rincon de los Esteros	265	Rancho Salsipuedes (Church property)
11	" (part of Peter & Peter dec'd)	88	Las Baulines	176	Rancho Bolsa de San Cayetano	266	Rancho Bolsa de San Cayetano
12	" (part of Peter et al & Tyrrell dec'd)	89	Sausalito	177	Cañada de Pinole	267	El Sur
13	Novato	90	Cota Madera del Presidio	178	San Felipe de los Animos	268	La Natividad
14	Ulo de Pino	91	Rancho de Corralitos	179	Laguna Seca (A.C. Bell et al)	269	Rancho de los Gatos
15	Refugio Prieto	92	Cañada del Rincon	180	Rancho Laguna Seca (Leonard et al)	270	Rancho de los Esteros
16	Trapani	93	San Geronimo	181	San Juan Bautista (J.B. Harrison)	271	" " (J.B. Brandon)
17	Las Nuez Children	94	San Pedro Mesa Mesquesty (to Dolores)	182	San Juan Bautista (Church property)	272	Rancho Cañada de la Segunda
18	Pescadero	95	Mesa San Gabriel (Church property)	183	San Juan Bautista (Church property)	273	Rancho Cañada de la Segunda
19	Bayo	96	San Mateo	184	Las Vegas	274	Rancho Cañada de la Segunda
20	Moscot	97	Sequoia	185	Rancho Cañada de la Segunda	275	Rancho Cañada de la Segunda
21	Johnson	98	Cañada de Guadalupe de Visitacion	186	Rancho Cañada de la Segunda	276	Rancho Cañada de la Segunda
22	Cubo	99	Olompali	187	San Francisco de los Flores	277	Rancho Cañada de la Segunda
23	Nicasio	100	Las Pilarcitas	188	San Vicente	278	Rancho Cañada de la Segunda
24	Nave Rebellion	101	Arroyo de los Magueyitos	189	San Vicente (Mission Church property)	279	Rancho Cañada de la Segunda
25	Johnson's Rancho	102	Arroyo San Jose Pass	190	San Vicente (Mission Church property)	280	Rancho Cañada de la Segunda
26	Swett	103	Rancho San Jose Pass	191	Rancho Cañada de la Segunda	281	Rancho Cañada de la Segunda
27	Rincon de Manzanos	104	Rancho Los Alisos	192	Rancho Cañada de la Segunda	282	Rancho Cañada de la Segunda
28	Peabody	105	Thompson's Rancho	193	Rancho Cañada de la Segunda	283	Rancho Cañada de la Segunda
29	Lobegrano	106	Cañada de los Pinos	194	Rancho Cañada de la Segunda	284	Rancho Cañada de la Segunda
30	Part of Rancho Punta de Quentin		Rancho Punta de Quentin	195	Rancho Cañada de la Segunda	285	Rancho Cañada de la Segunda
31	" " (part of T. Murphy)	107	Arroyo de los Nuiles y Baltasar	196	Rancho Cañada de la Segunda	286	Rancho Cañada de la Segunda
32	" " (part Coleman et al)	108	Arroyo de los Putos Colorados	197	Rancho Cañada de la Segunda	287	Rancho Cañada de la Segunda
33	Ochagamo	109	Acalanes	198	Rancho Cañada de la Segunda	288	Rancho Cañada de la Segunda
34	Pinoles	110	La Boca de la Cañada de Pinole	199	Rancho Cañada de la Segunda	289	Rancho Cañada de la Segunda
35	Cañada de Pinoles	111	Los Meganos	200	Rancho Cañada de la Segunda	290	Rancho Cañada de la Segunda
36	Bocanas		Rancho Los Meganos	201	Rancho Cañada de la Segunda	291	Rancho Cañada de la Segunda
37	Rio Jesus Maria	112	Cañada del Diablo	202	Rancho Cañada de la Segunda	292	Rancho Cañada de la Segunda
38	Del Paso	113	Arroyo del Valle	203	Rancho Cañada de la Segunda	293	Rancho Cañada de la Segunda
39	San Jacinto	114	San Pablo	204	Rancho Cañada de la Segunda	294	Rancho Cañada de la Segunda
40	Rio de las Americanos	115	Rancho Rio de los Americanos	205	Rancho Cañada de la Segunda	295	Rancho Cañada de la Segunda
41	San Pedro	116	Rancho Rio de los Americanos	206	Rancho Cañada de la Segunda	296	Rancho Cañada de la Segunda
42	Rio de las Putos	117	Rancho Rio de los Americanos	207	Rancho Cañada de la Segunda	297	Rancho Cañada de la Segunda
43	Los Putos	118	Rancho Rio de los Americanos	208	Rancho Cañada de la Segunda	298	Rancho Cañada de la Segunda
44	Laveldeno	119	Rancho Rio de los Americanos	209	Rancho Cañada de la Segunda	299	Rancho Cañada de la Segunda
45	Cañada de	120	Rancho Rio de los Americanos	210	Rancho Cañada de la Segunda	300	Rancho Cañada de la Segunda
46	La Isla	121	Rancho Rio de los Americanos	211	Rancho Cañada de la Segunda	301	Rancho Cañada de la Segunda
47	Cañada Pinnacles	122	Rancho Rio de los Americanos	212	Rancho Cañada de la Segunda	302	Rancho Cañada de la Segunda
48	Del Puerto	123	Rancho Rio de los Americanos	213	Rancho Cañada de la Segunda	303	Rancho Cañada de la Segunda
49	Orestimba	124	Rancho Rio de los Americanos	214	Rancho Cañada de la Segunda	304	Rancho Cañada de la Segunda
50	Hatch	125	Rancho Rio de los Americanos	215	Rancho Cañada de la Segunda	305	Rancho Cañada de la Segunda
51	Rodriguez	126	Rancho Rio de los Americanos	216	Rancho Cañada de la Segunda	306	Rancho Cañada de la Segunda
52	Rancho Rio de los Americanos	127	Rancho Rio de los Americanos	217	Rancho Cañada de la Segunda	307	Rancho Cañada de la Segunda
53	Cañada de Jerez	128	Rancho Rio de los Americanos	218	Rancho Cañada de la Segunda	308	Rancho Cañada de la Segunda
54	Cañada de Pogolimo	129	Rancho Rio de los Americanos	219	Rancho Cañada de la Segunda	309	Rancho Cañada de la Segunda
55	Alcalde	130	Rancho Rio de los Americanos	220	Rancho Cañada de la Segunda	310	Rancho Cañada de la Segunda
56	Rancho de la Merced	131	Rancho Rio de los Americanos	221	Rancho Cañada de la Segunda	311	Rancho Cañada de la Segunda
57	Celery	132	Rancho Rio de los Americanos	222	Rancho Cañada de la Segunda	312	Rancho Cañada de la Segunda
58	Llano de Santa Rosa	133	Rancho Rio de los Americanos	223	Rancho Cañada de la Segunda	313	Rancho Cañada de la Segunda
59	Cañada de Santa Rosa	134	Rancho Rio de los Americanos	224	Rancho Cañada de la Segunda	314	Rancho Cañada de la Segunda
		135	Rancho Rio de los Americanos	225	Rancho Cañada de la Segunda	315	Rancho Cañada de la Segunda
		136	Rancho Rio de los Americanos	226	Rancho Cañada de la Segunda	316	Rancho Cañada de la Segunda
		137	Rancho Rio de los Americanos	227	Rancho Cañada de la Segunda	317	Rancho Cañada de la Segunda
		138	Rancho Rio de los Americanos	228	Rancho Cañada de la Segunda	318	Rancho Cañada de la Segunda
		139	Rancho Rio de los Americanos	229	Rancho Cañada de la Segunda	319	Rancho Cañada de la Segunda
		140	Rancho Rio de los Americanos	230	Rancho Cañada de la Segunda	320	Rancho Cañada de la Segunda
		141	Rancho Rio de los Americanos	231	Rancho Cañada de la Segunda	321	Rancho Cañada de la Segunda
		142	Rancho Rio de los Americanos	232	Rancho Cañada de la Segunda	322	Rancho Cañada de la Segunda
		143	Rancho Rio de los Americanos	233	Rancho Cañada de la Segunda	323	Rancho Cañada de la Segunda
		144	Rancho Rio de los Americanos	234	Rancho Cañada de la Segunda	324	Rancho Cañada de la Segunda
		145	Rancho Rio de los Americanos	235	Rancho Cañada de la Segunda	325	Rancho Cañada de la Segunda
		146	Rancho Rio de los Americanos	236	Rancho Cañada de la Segunda	326	Rancho Cañada de la Segunda
		147	Rancho Rio de los Americanos	237	Rancho Cañada de la Segunda	327	Rancho Cañada de la Segunda
		148	Rancho Rio de los Americanos	238	Rancho Cañada de la Segunda	328	Rancho Cañada de la Segunda
		149	Rancho Rio de los Americanos	239	Rancho Cañada de la Segunda	329	Rancho Cañada de la Segunda
		150	Rancho Rio de los Americanos	240	Rancho Cañada de la Segunda	330	Rancho Cañada de la Segunda
		151	Rancho Rio de los Americanos	241	Rancho Cañada de la Segunda	331	Rancho Cañada de la Segunda
		152	Rancho Rio de los Americanos	242	Rancho Cañada de la Segunda	332	Rancho Cañada de la Segunda
		153	Rancho Rio de los Americanos	243	Rancho Cañada de la Segunda	333	Rancho Cañada de la Segunda
		154	Rancho Rio de los Americanos	244	Rancho Cañada de la Segunda	334	Rancho Cañada de la Segunda
		155	Rancho Rio de los Americanos	245	Rancho Cañada de la Segunda	335	Rancho Cañada de la Segunda
		156	Rancho Rio de los Americanos	246	Rancho Cañada de la Segunda	336	Rancho Cañada de la Segunda
		157	Rancho Rio de los Americanos	247	Rancho Cañada de la Segunda	337	Rancho Cañada de la Segunda
		158	Rancho Rio de los Americanos	248	Rancho Cañada de la Segunda	338	Rancho Cañada de la Segunda
		159	Rancho Rio de los Americanos	249	Rancho Cañada de la Segunda	339	Rancho Cañada de la Segunda
		160	Rancho Rio de los Americanos	250	Rancho Cañada de la Segunda	340	Rancho Cañada de la Segunda
		161	Rancho Rio de los Americanos	251	Rancho Cañada de la Segunda	341	Rancho Cañada de la Segunda
		162	Rancho Rio de los Americanos	252	Rancho Cañada de la Segunda	342	Rancho Cañada de la Segunda
		163	Rancho Rio de los Americanos	253	Rancho Cañada de la Segunda	343	Rancho Cañada de la Segunda
		164	Rancho Rio de los Americanos	254	Rancho Cañada de la Segunda	344	Rancho Cañada de la Segunda
		165	Rancho Rio de los Americanos	255	Rancho Cañada de la Segunda	345	Rancho Cañada de la Segunda

Explanation | Surveys executed, and returned to this Office
S.S.S.& R. Townships subdivided into Sections, and returned to this Office

Scale 15 Miles to an inch

Surveyor General's Office
San Francisco California, June 30th 1863

L Upson
U.S. Surv. Gen.l Cal.

Index Boundaries
A Base Line
B Base Line
D Mount Diablo

U. S. Land Office
San Francisco Cal.
September 28 1866

I hereby certify that a duplicate map of the State of California similar in all respects that are entitled as far as I can judge to this map, has this day been filed in this Office

James M Shanklin
Register

Santa Barbara Channel

San Pedro Channel

Mexican Boundary

1st Stand North

2nd Stand North

3rd Stand North

4th Stand North

1st Stand South

2nd Stand South

3rd Stand South

4th Stand South

5th Stand South

Tulare

Colorado River

No. 1302
U States
v.
A.P.R.R.Co
et al

p. 1230.

PLAT

designating the line of the

ATLANTIC AND PACIFIC RAIL ROAD

commencing at the line of Springfield

in the County of Greene in the State of Missouri and

thence to the western boundary line of said State

Scale 3 miles to one inch

BARTON

DADE

GREENE

JASPER

LAWRENCE

CHRISTIAN

STONE

BARRY

McDONALD

POLK

ATLANTIC AND PACIFIC RAILROAD

Line of the State of Arkansas

Western boundary line of the State of Missouri

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

EXPLANATION

Rail Road line

Twenty mile line on each side of Rail Road

Thirty " " " " " " "

Copy of the Record of the Board of Directors of the Atlantic and Pacific Railroad Compy

"New York. November 20th 1866

"Ordered. That the location of the line of Road of the "Company between Springfield Missouri and the West "line of said State as indicated on Map now sub- "mitted be and the same is hereby adopted, and that "the President and Secretary be directed to authenticate "such to the Secretary of the Interior, and that a copy "of such authentication and Map be filed, with "the Secretary of the Interior"

A true Copy. Attest

F.C. Fremont Pres.t

Chas.A Howland Secy
of Atlantic & Pacific RR Co.

Received at Genl. Land Office
December 17th 1866. with letter
from Secty of Interior dated
December 15th 1866

Seal 1866

No. 1302
U.S. states
v.
S.P.R.R. Co.
et al.

p. 1232

State of Massachusetts
County of Suffolk }

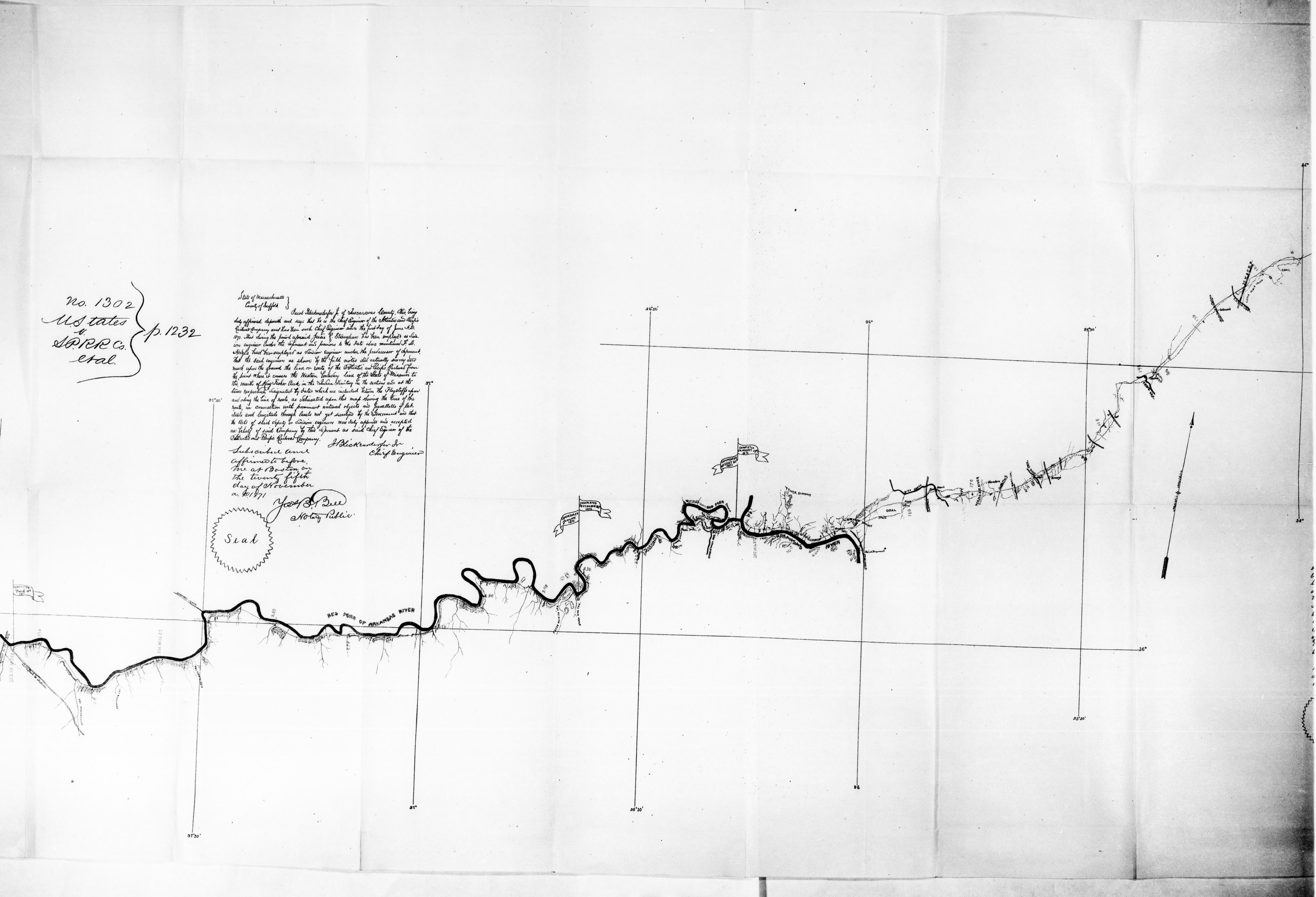
Jacob Blickensderfer Jr. of Tuscarawas County, Ohio being duly affirmed deposeth and says that he is the Chief Engineer of the Atlantic and Pacific Railroad Company and has been such Chief Engineer since the first day of June A.D. 1871. That during the period aforesaid Jesse L. Stranahan was employed as Division engineer under the deponent and previous to the date above mentioned F. W. Sparks had been employed as Division engineer under the predecessor of deponent. That the said engineers as shown by the field notes did actually survey and mark upon the ground the line or route of the Atlantic and Pacific Railroad from the point where it crosses the Western Boundary line of the State of Missouri to the mouth of King Fisher Creek in the Indian Territory in the sections and at the times respectively designated by dates which are included between the Flagstaffs upon and along the line of route as delineated upon this map showing the line of the route in connection with prominent natural objects and Gazetteer of Stations and Longitudes through lands not yet surveyed by the Government and that the acts of said deputy or Division engineers were duly approved and accepted on behalf of said Company by this deponent as said Chief Engineer of the Atlantic and Pacific Railroad Company.

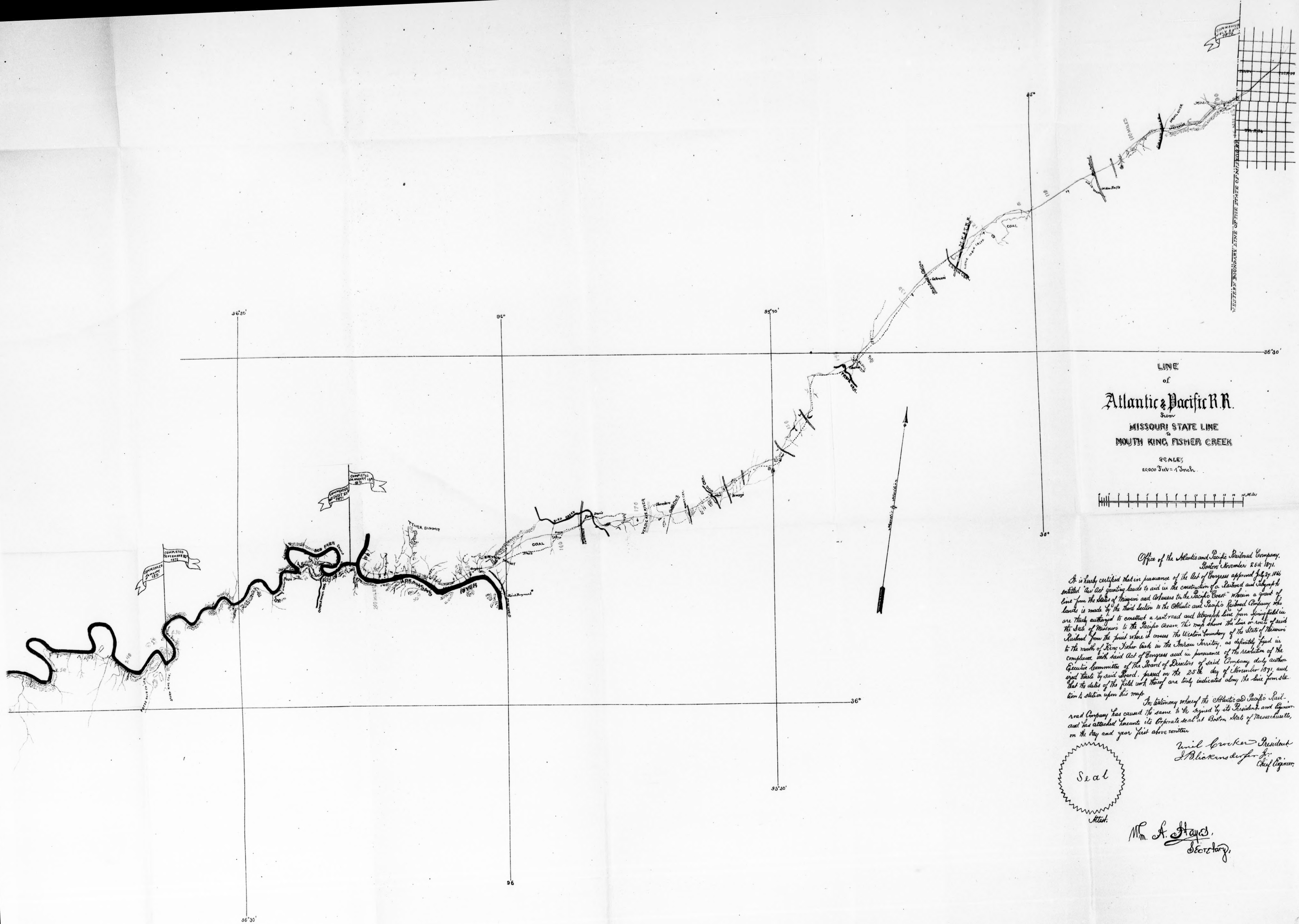
J. Blickensderfer Jr
Chief Engineer

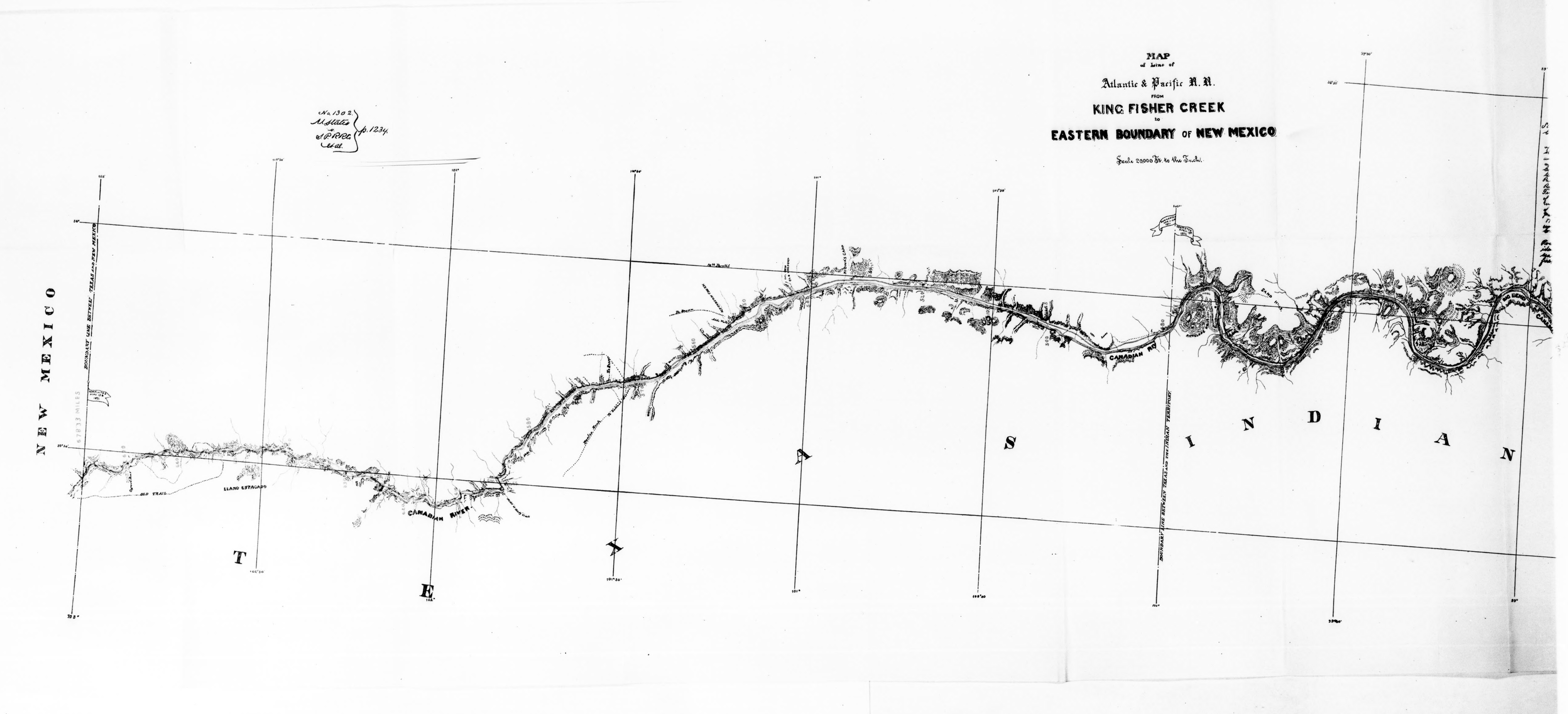
Subscribed and affirmed to before me at Boston on the twenty fifth day of November A. D. 1871

Josiah B. Bell
Notary Public

Seal


97°30'
97°
96°30'
96°
95°30'
95°
37°
36°30'
36°
RED FORK OF ARKANSAS RIVER
ARKANSAS RIVER
COAL
COMPLETED DECEMBER 31 1871
COMPLETED JANUARY 1872
COMPLETED SEPTEMBER 1871
COMPLETED JANUARY 1873
COMPLETED JANUARY 1872
COMPLETED DEC


36°30'
95°
95°10'
36°30'
36°
COMPLETED SEPTEMBER 1870
COMMENCED AUGUST 1870
COMPLETED JANUARY 1870
COMMENCED AUGUST 1870
COMPLETED SEPTEMBER 1870
COMMENCED 1870
RIVER SUMMIT
ARKANSAS RIVER
COAL
SALT
LEAD
ZINC
TRADE RIVER
Chanute
Girard
Baxter Springs
Miami
Commerce
Vinita
Claremore
Tulsa
Red Fork
Arkansas River
Keystone
Sand Springs
Skiatook
Pawhuska
Bird Creek
Osage Agency
Hominy
Pawhuska
Gray Horse
Fairfax
Ponca
Arkansas River
Salt Fork
Arkansas River
Chilocco
Arkansas River
Arkansas River
Arkansas River


MAP
of Line of
Atlantic & Pacific R. R.
FROM
KING FISHER CREEK
to
EASTERN BOUNDARY OF NEW MEXICO
Scale 20000 Ft. to the Inch.
No. 1302.
M. States
v.
S.P.R.R.Co.
et al.
p. 1234.
NEW MEXICO
TEXAS
INDIAN
BOUNDARY LINE BETWEEN TEXAS AND NEW MEXICO
BOUNDARY LINE BETWEEN TEXAS AND THE INDIAN TERRITORY
67833 MILES
OLD TRAIL
LLANO ESTACADO
CANADIAN RIVER
CANADIAN RD
SAND HILL
NO DEAD CANAL

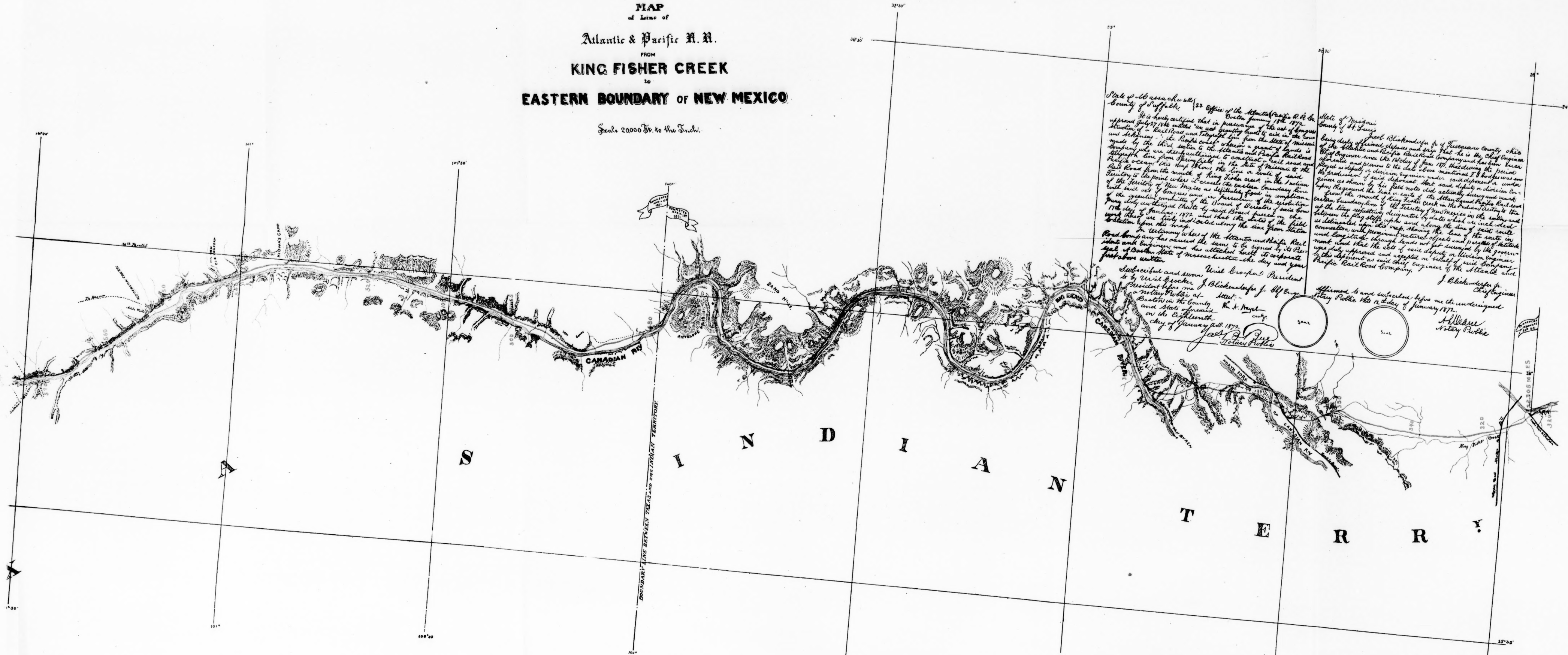
MAP
of Line of

Atlantic & Pacific R.R.
FROM

KING FISHER CREEK
to

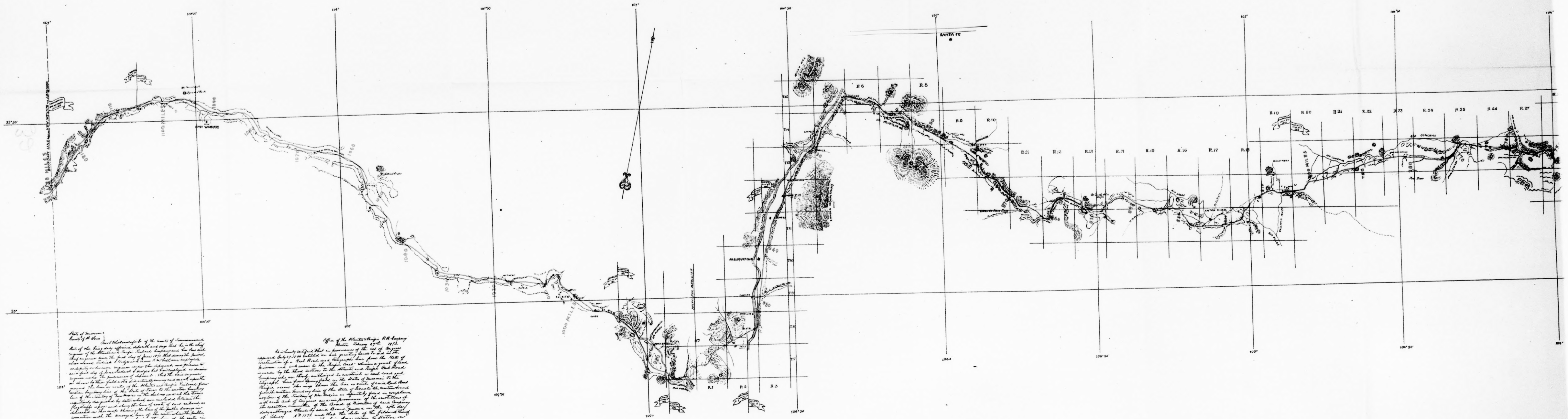
EASTERN BOUNDARY OF NEW MEXICO

Scale 20000 Ft. to the Inch.


INDIAN TERRY
BOUNDARY LINE BETWEEN TEXAS AND INDIAN TERRITORY
CANADIAN RIV
CANADIAN RIV
CANADIAN RIV
KING FISHER CREEK
Rock Island R.R.
Atlantic & Pacific R.R.
Atlantic & Pacific R.R.
Atlantic & Pacific

MAP
of
ATLANTIC & PACIFIC R.R.
THROUGH THE
TERRITORY OF NEW MEXICO

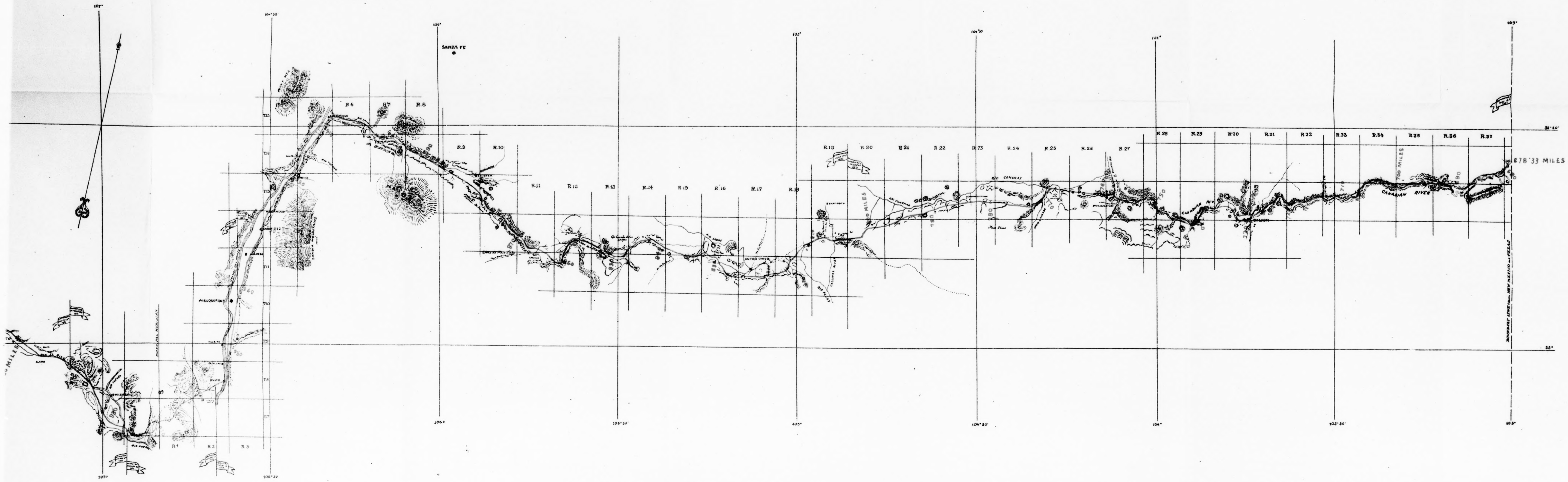
Scale: 20000 Feet to the Inch.



MAP of ATLANTIC & PACIFIC R.R. THROUGH THE TERRITORY OF NEW MEXICO

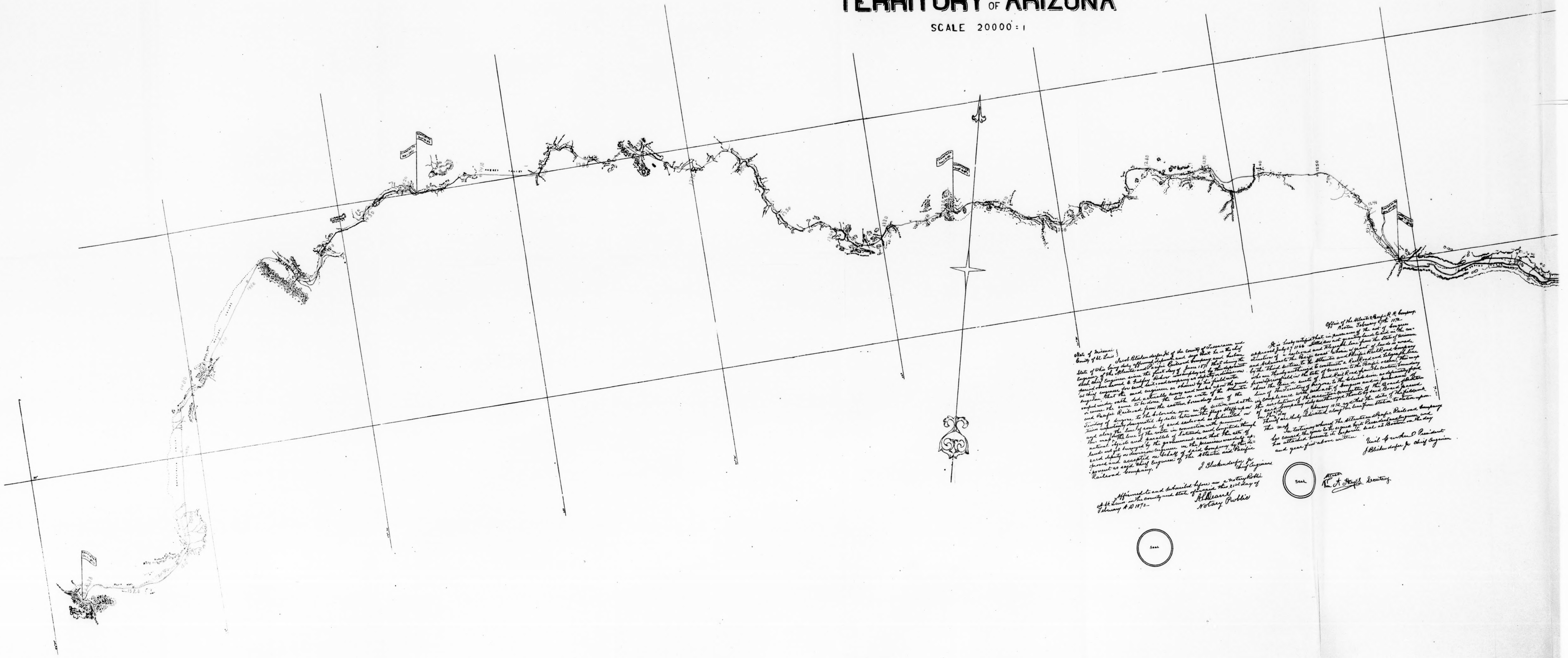
Scale: 20000 Feet to the Inch.

No. 1347 U. States of S. P. R.R. Co. Mals. p. 1236.



Map
of
ATLANTIC & PACIFIC R.R.
THROUGH THE
TERRITORY OF ARIZONA
SCALE 20000 : 1

No 1902.
U.S. ex rel
A. & P. R.R. Co et al
v.
p. 1295



State of Missouri }
County of the Seat }

Jacob Blickensderfer Jr. of the County of Jefferson and State of Missouri being duly sworn on oath says that he is the Chief Engineer of the Atlantic and Pacific Railroad Company that the annexed plat or diagram of the line of the Atlantic and Pacific Railroad Company from the Colorado River to the Rio Puerco, a distance of 357 miles and 40 chains, is a correct plat or diagram of the line of said road as located and constructed by the said Company, and that the same is correctly laid down upon said plat or diagram as the line of said road, and that the said plat or diagram was made by the order of the Board of Directors of said Company, and that the same is a correct plat or diagram of the line of said road as located and constructed by the said Company

Map
of
ATLANTIC & PACIFIC R.R.
THROUGH THE
TERRITORY OF ARIZONA

SCALE 20000 : 1

No. 1302.
U. States
vs.
SORRG
et al
p. 1238

State of Missouri }
County of St. Louis }

Jacob Blickensderfer Jr. of the County of Tuscarawas and State of Ohio being duly affirmed deposeth and says that he is the Chief Engineer of the Atlantic and Pacific Railroad Company and has charge of the Engineering of the Atlantic and Pacific Railroad Company from the first day of June 1871 that during the said time he has had charge of the location and construction of the said Railroad and has personally directed the several corps employed in the location of the line of the said Railroad and is the Chief Engineer of the said Company as shown by the field notes and maps of the said Railroad Company on file in the office of the Company in the City of St. Louis and that the said Railroad has been located and constructed under the direction of the said Engineer as shown by the said field notes and maps and that the said Railroad from the Atlantic and Pacific Railroad from the eastern boundary of the Territory of Arizona to the Colorado River as shown by the said field notes and maps is the line of the said Railroad Company as located and constructed by the said Company and that the said line of said